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VOL. XXXI AUGUST, 1937 NO. 4

CONTENTS

Law and Sovereignty	J. Roland Pennock	617
Militant Democracy and Fundamental Rights, II	Karl Loewenstein	638
State Constitutional Law in 1936–37	J. A. C. Grant	659
American Government and Politics		
Congressional Investigations During Franklin D. Roosevelt's First Term	M. Nelson McGeary	680
The "Merit System" Again	Kenneth C. Cole	695
Organization of the Executive Branch of the National Government of the United States	L. F. Schmeckebier	699
Foreign Governments and Politics		
The Summer Schools and Other Educational Activities of the British Liberal Party	Joseph R. Starr	703
News and Notes, Personal and Miscellaneous	Managing Editor	720
Book Reviews and Notices		727
Doctoral Dissertations in Political Science	E. S. Wengert	772
Recent Publications of Political Interest		
Books and Periodicals	Charles S. Hyneman	786
Government Publications	Miles O. Price	812

(For list of Book Reviews, see next page)

Published Bi-monthly by
THE AMERICAN POLITICAL SCIENCE ASSOCIATION

Publication Office, 450–458 Ahnaip St., Menasha, Wis.

Editorial Office
209 South Hall
University of Wisconsin
Madison, Wisconsin

Secretary of the Association
305 Harris Hall
Northwestern University
Evanston, Illinois

Foreign Agents, P. S. King and Son, Ltd., Great Smith St., Westminster, London

Entered as second class matter at the post office at Menasha, Wis., under the Act of August 4, 1912.
Acceptance for mailing at special rate of postage provided for in Section 1103,
Act of October 3, 1917, authorized May 12, 1926.

Made in the United States of America

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REVIEWS OF BOOKS

Cook, History of Political Philosophy from Plato to Burke. Walter Thompson 727
Lewis, A History of American Political Thought from the Civil War to the World War. Benjamin F. Wright, Jr. 728
Ascoli and Lehmann (eds.), Political and Economic Democracy. Merle Fainsod 729
Merriam, The Rôle of Politics in Social Change. R. M. MacIver 731
Gerstenberg, American Constitutional Law. Earl H. DeLong 732
Walker, Public Administration in the United States. John A. Fairlie 733
Bates, The Story of the Supreme Court; *Ernst*, The Ultimate Power. James Hart 734
Lancaster, Government in Rural America. Harold M. Dorr 735
Brookings Institution, The Recovery Problem in the United States; *Franck*, L'Expérience Roosevelt. James T. Young 736
War Memoirs of David Lloyd George, Vols. V-VI. Herbert W. Briggs 739
Patterson, The Administration of Justice in Great Britain. Pendleton Howard 741
Strong, The New Soviet Constitution. Bertram W. Maxwell 742
Gramsch, Grundlagen und Methoden Internationalen Revision. Pitman B. Potter 743
Schuman, International Politics. William P. Maddox 744
Eagleton, Analysis of the Problem of War; *Millis*, Viewed Without Alarm: Europe Today. Frederick L. Schuman 745
Freund, Zero Hour: Policies of the Powers. Malbone W. Graham ... 746
Johnstone, The Shanghai Problem. William W. Lockwood, Jr. 747
McCain, The United States and the Republic of Panama. Russell H. Fitzgibbon 749
Briefer Notices 751
Dumond, Roosevelt to Roosevelt; *Phillips*, American Government and Its Problems; *Ogburn*, Social Characteristics of Cities; *Carleton*, Reorganization and Consolidation of State Administration in Louisiana; *Maccoby*, English Radicalism, 1832–1852; *Heinberg*, Comparative Major European Governments; *Simpson*, The Ejido; *Padmore*, How Britain Rules Africa; *van Vollenhoven*, The Law of Peace; *Pritchard*, The Crucial Years of Early Anglo-Chinese Relations; *May and Doob*, Competition and Coöperation; *Mackenzie*, Planned Society; etc.

THE AMERICAN POLITICAL SCIENCE REVIEW, published bi-monthly, is supplied to all members of the American Political Science Association. The annual dues are $5.00 a year ($3.00 for graduate and undergraduate students in colleges and universities).

Single numbers of the REVIEW are sold as follows: Vols. I-VIII, $1.50 each; Vols. IX-XXV (1915–31), $1.25 each; Vol. XXVI (1932) and following, $1.00 each.

Applications for membership, orders for the REVIEW, and remittances should be addressed to 450–458 Ahnaip St., Menasha, Wis., or to Kenneth Colegrove, 305 Harris Hall, Northwestern University, Evanston, Illinois.

Correspondence concerning contributions to the REVIEW—likewise books submitted for review—should be addressed to Frederic A. Ogg, Managing Editor, 209 South Hall, University of Wisconsin, Madison, Wis.

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The American
Political Science Review

VOL. XXXI AUGUST, 1937 NO. 4

LAW AND SOVEREIGNTY

J. ROLAND PENNOCK
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Political theorists have spilt much ink in controversies over "sovereignty," while probably even more effort has been devoted to discussion of the nature of law. It cannot be said that the result of all this activity has been to produce a body of generally accepted doctrine, or even that it has greatly clarified the field of discussion. On the contrary, misunderstandings and the abuse of terms have contributed greatly to a general fog.

The real issue raised by the pluralists[1] is much more than a question of logic. They challenge the premises of their opponents.[2] They deal largely with the question of the limits of political obligation. With that we are not here concerned. The primary purpose of this article is to search for a meaning of "law" that will at once contribute to the clarification of the question as to the nature of law and aid in the determination of the most helpful legal significa-

[1] It is not implied that all of the confusion arises from the differences between pluralists and monists. The latter disagree among themselves. Some treat law as the product of "sanction," while others insist that it must be based upon nothing but an "initial hypothesis;" some locate sovereignty in the amending power, while others hold that the constitution is anterior to sovereignty; some assert that there is an important difference between "legal" and "political" sovereignty, while others maintain that such a distinction is "simply the nineteenth century form of an ancient confusion of thought." C. H. McIlwain, "Sovereignty Again," *Economica*, Vol. 6 (1926), pp. 253–268, at p. 257. For other examples of the variety of views suggested above, see W. W. Willoughby, *Fundamental Concepts of Public Law* (New York, 1931), *passim*, and especially pp. 71–72, and 145–147; T. E. Holland, *The Elements of Jurisprudence* (10th edition, New York, 1906), p. 16; Hans Kelsen, "Les Rapports de system entre le droit interne et le droit international public," in *Receuil des Cours*, Vol. 14 (1926), pp. 231–329.

[2] Thus even Mr. Laski now admits, that "any criticism of the pure theory of law . . . is an endeavor to change its postulates because of a dislike of the results to which they formally lead." *The State in Theory and Practice* (New York, 1935), p. 19.

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tion of the term "sovereignty."[3] The accomplishment of this purpose should aid in settling the incidental questions of the nature of "constitutional law," the possibility of "nullifying" law, and the status of "international law."

The two subjects—law and sovereignty—are frequently treated independently, but they are so inter-related as to render such treat-

[3] Mr. Douglas W. Campbell, in an article entitled "Sovereignty and Social Dynamics" in this REVIEW (Vol. 28, pp. 825–837), has approached the same problem—or at least the latter half of it—by attempting a redefinition of "sovereignty." Mr. Campbell sees clearly that in common usage the word "sovereignty" is used to include at least two different meanings, and that the resulting confusion accounts for much of the controversy over the term. His solution is to attempt the formulation of a definition that includes all elements. I must confess that I do not believe he has succeeded. Furthermore, I doubt whether success along that line is possible. He himself points out the difference between what the jurists are trying to do and what the realists are interested in, and, in the quotation from Professor Dickinson (p. 831), gives the basis for the juristic attempt. Experience tells us, however, declares Mr. Campbell, that in fact the ascription to sovereignty of even legal omnipotence will drive certain thinkers, such as Mr. Laski, to define sovereignty in terms of power instead of form.

The fact seems to remain, however, that Mr. Willoughby and Mr. Laski are talking about different things; and it is impossible to avoid this difficulty by trying to concoct a definition that includes them both. This observation, I believe, is borne out by Mr. Campbell's definition. "Sovereignty," he states, "is that power within a social unit which decides between the rules and regulations which the organization, and force, of the social unit as a unit will sponsor—that is, which both organizes a social unit into a working political unit and denotes that it is a working political unit." Clearly this does not accomplish the purpose of the jurists, and consequently it will drive them to further controversy, just as their definitions stimulate Mr. Laski. In the first place, the very definition of sovereignty as "power" does violence to the juristic concept of it as "legal authority." Furthermore, the definition is inherently incapable of giving to the concept that element which it is the chief desire of the jurists to attain—precision. It supplies no means of telling whether or not a society possesses sovereignty; or, perhaps, the question would be whether or not a given group constitutes a "social unit" or a "working political unit."

The idea of the inherent limitations placed upon social forces by the necessity of organization, as suggested by Michels, is very valuable, and one which I should like to see developed more fully. It remains, however, a discussion of factors conditioning what you may call "political sovereignty," if you will, but certainly not aiding in the definition of legal sovereignty. I propose to define sovereignty from the juristic point of view in such a way that the fact that it has nothing directly to do with either power or justice will be apparent to all. In this form, I hope that the concept will be sufficiently innocuous not to lead "anti-absolutists to find it diabolical"!

It is not to be inferred from this that the realm of the jurist is, or can be, completely isolated from that of the social scientist. This comes out clearly in the discussion below of the nature of law, particularly in my rejection of Kelsen's position in this regard. It is, however, in the definition of law, rather than in the concept of sovereignty, that the foundation of juristic formalism upon political and sociological substance can best be worked out.

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ment inadequate. A brief examination of the controversy over "sovereignty" will demonstrate how it ultimately resolves itself into a question of the definition of law.

Let us begin with Austin's classic definition of sovereignty. It reads as follows: "If a determinate human superiour, not in the habit of obedience to a like superiour, receive habitual obedience from the bulk of a given society, that determinate human superiour is sovereign in that society, and the society (including the superiour) is a society political and independent."[4] By a superior, he meant one who possesses "the power of affecting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one's wishes."[5] He further defines "a law" as a command of the sovereign, and, by his definition of "command," makes the existence of a sanction (or a "superiour," as defined above) the essential characteristic of law.

The line of attack upon this definition has taken several directions. The ascription of unlimited power to the sovereign has been assailed as in conflict with both justice and actuality. The juristic followers of Austin, however, make clear that they are not dealing with questions of right and wrong, nor, again, with practical limitations upon the exercise of sovereignty, but only with the *legal* situation. With this preliminary sparring out of the way, we come to more fundamental criticisms of the Austinian theory. It is argued, for instance, that a theory of sovereignty that accounts only for the formal aspect of law and not for its substance is completely inadequate, because it denies the character of law to international law, because of the difficulties it encounters in accounting for customary law, because of the aura of sanctity it gives to the state, and because of its omission of the factors which in practice limit the realm over which the government dares to legislate, Here, clearly, it is the question of the nature of law that is fundamental.

Another line of attack of which the pluralists are fond is to defy their opponents to point to the sovereign—Austin's "determinate human superiour"—in a given state. Here, undoubtedly they have a sound point, at least as against Austin. His definition in terms of obedience, at this point, definitely breaks down. To whom are the people of England habitually obedient? To the king-in-Parliament? Austin would have been on safer ground had he said so, but he

[4] *Lectures on Jurisprudence* (4th ed., London, 1884), p. 226.
[5] *Ibid.*, p. 99.

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added to their number "the electoral body of the Commons."[6] This, of course, opens the way to endless difficulty. When Austin wrote, women were not entitled to vote in England. But who is to say that the electoral body of the Commons—at least in part—did not obey their wives? Later writers have attempted to avoid this difficulty by restricting the sovereign to those who are legally entitled to obedience. Thus, in England it would be the king-in-Parliament, and in the United States all those individuals who are or may be entitled to participate in the process of amending the Constitution. Clearly, however, even this limitation is insufficient. For it is not merely these individuals as such who possess ultimate authority, but only these individuals acting in the manner prescribed by law. The members of the Senate cannot enact laws between innings in the stands of the Washington baseball field (even though a quorum may be present). There is a circularity in the above reasoning. Sovereignty, it is said, is the authority of those entitled by law to exercise it; while law, in turn, is defined as the command of the sovereign. Thus, here again, the conflict over sovereignty leads directly to the question of the nature of law. This is a difficulty which even the modern refinements of Austinian logic have not altogether avoided. For example, Mr. W. W. Willoughby, the outstanding defender of juristic theory among writers in English today, holds that if there is a question as to the location of sovereignty, "the test to be applied is the question as to which political entity or person, in the last instance, has the *legal* power to determine its own competency as well as that of the others."[7]

This difficulty can be overcome, I would suggest, only by giving up the concept of "the sovereign" entirely. It is, in any case, not at all essential to the concept, or theory, of sovereignty. This, in fact, is the position that has been reached by the Austrian jurist, Hans Kelsen. Sovereignty of the state, says Kelsen, can be comprehended only if it is conceived as the validity of a system of norms, which system derives its validity from no outside source, but rather from an "initial hypothesis"—such as, "You ought to conform to the orders of Parliament"—to which the whole system can logically be reduced.[8] Clearly, Kelsen renders his system immune from criticism of the type that we have been considering. His theory can be attacked only by reference to his failure to give

[6] *Op. cit.* (1832 ed.), p. 241.
[7] *Op. cit.*, p. 75 (Italics mine).
[8] *Loc. cit.* (see note 1), pp. 254–256.

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a satisfactory explanation of the nature of his "system of norms," to which I shall recur later.

In other ways, also, the later refinements of juristic theory—Willoughby's designation of the distinguishing characteristic of law as the "official imprimatur of the state,"[9] and Kelsen's theory just referred to—make it increasingly apparent that it is on the question of the meaning of "law" that the issue must ultimately be decided. Granted the juristic definition of law, the conclusions deduced from it are but truisms. Willoughby's refinement, however, although it lays low many of the fallacious and captious criticisms which have been levelled against Austinian theory, does not get at the real root of the matter. If law is such by reason of its having received "the official imprimatur of the state," then what is the state and what determines its "official imprimatur?" What makes this constitutional procedure, which has the power of giving the quality of legality to a pronouncement, itself legal? The jurists seem to offer only two choices. One—Austin's solution of using the habitual obedience of the bulk of the people—they are definitely trying to avoid. The only other offered would seem to be Kelsen's even less satisfactory "initial hypothesis." According to Kelsen, the question of the origin and basis of law is beyond the realm of jurisprudence. It is "metajuristic." The jurist merely postulates it.[10] This, however, is of little assistance to the person who wishes to know when and how a régime established, say, by a *coup d'état*, becomes legal, or to the solution of the juridical nature of international law. Thus Austin sacrifices certainty for the sake of realism, as we saw in the vain search for his "determinate human superiour;" while Kelsen restricts his theory to the realm of subsidiary law,[11] ruling out questions as to its premises, for the sake of building a water-tight juristic structure.

Let us, then, examine more closely the formalistic definitions of law. According to them, law is a command, or at least a proposition capable of formulation as a command. One theory makes the sanction behind the command the essential characteristic of law. An-

[9] *Op. cit.*, p. 147.

[10] Referring to the example of the Russian revolution, Kelsen admits that there must be a certain degree of correspondence between norms and facts, which the original norm must reflect in order to be binding. How this can be accounted for in terms of his theory, or even compatibly with it, however, he fails to explain. *Der Soziologische und der Juristische Staatsbegriff* (Tübingen, 1928), p. 95.

[11] "Subsidiary," that is, to the "original hypothesis."

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other fixes upon obedience as the test. We shall begin with the former. A law, says Austin, is a command from a determinate superior to an inferior—that is, from one who has power over the other to influence the action of the other by force or fear. Furthermore, "every positive law, or every law strictly so called," he continues, "is a direct or circuitous command of a monarch or sovereign number in the character of a political superior."[12]

There are, I believe, at least two cases which demonstrate the inadequacy of this definition. In the first place, we ask the question: Is a sanction always a requisite for the existence of law? Students of jurisprudence of the historical school assure us that there are primitive tribes that maintain systems of rules without sanctions, which are at least in all other respects similar to political law.[13] Sir Frederick Pollock cites the Icelandic sagas for examples of such rules.[14] If it be objected that even in such cases some sort of sanction, concealed and unorganized though it may be, must exist, we may well admit the point.[15] It still remains true that there is no determinate, political superior, as required by Austin's definition.

Secondly, the question arises: Would all cases falling within Austin's definition be law according to our general notion of that term? Let us suppose that a few individuals, by threat of violence, succeeded in forcing their will upon a large group of people, rendering them virtually slaves. For convenience, we shall imagine these people safely isolated on a South Sea isle, completely removed from external human control. The possessors of the only firearms on the island succeed in establishing a despotism dedicated to their own advancement in power and comfort, and nothing else. The "subjects," if we can call them that, obey through fear alone, recognizing no element of justice or objective necessity in the situation, and not being reconciled to submission one moment longer than sheer consideration for their own safety dictates. I can only appeal again to the general notion of what law is in support of my conviction that this case would not fit it.

If, then, the definition of political law in terms of sanction fails,

[12] Austin, *op. cit.* (1884 ed.), p. 183.

[13] The qualifier "political" is used to distinguish the term "law" from scientific laws, "natural law," moral laws, etc., and at the same time to include non-sovereign law (*e.g.*, international law), which the phrase "positive law" would rule out.

[14] *A First Book of Jurisprudence* (London, 1896), pp. 22–24.

[15] For examples of laws having such sanctions, and none other, see Bronislaw Malinowski, *Crime and Custom in Savage Society* (New York, 1926), *passim*.

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because it includes both too little and too much, is the alternative definition in terms of obedience any better? A rule that gets itself habitually obeyed by the bulk of the members of a given society, it is said, is *ipso facto* law. This type of definition is particularly favored by those who are desirous of bringing international law within the realm of political law. But, again, the proposed formula is both too broad and too narrow. It is too narrow because it would not attribute legal character to the numerous regulations in our modern society which are ordinarily neither enforced nor obeyed—for instance, many traffic regulations—and yet which are, upon occasion, enforced.

Further difficulties lie at the other extreme. The definition includes too much. In the first place, it is clearly subject with equal force to the last objection urged against the sanction test: it would include a régime of pure force and fear. But, more than this, it would also comprehend all kinds of customary rules. Take, for instance, a primitive society. Certain regular forms of behavior are observed. Certain acts are taboo. Certain rituals must be performed. Many of these rules, such as those regarding festivals and sacrifices, we would today classify as religious. Others, among them those regulating marriage and sex life, we might call ethical.[16] Those that had to do, for example, with property rights we would denominate as political or, strictly, legal rules. How are these latter to be distinguished from the others?[17] Holders of this theory, when they face these issues at all, fall back upon either a formal or a substantive test. But to make use of a formal test merely prolongs the agony, and ultimately leaves us faced again with the original difficulty.

Shall we set up some political organ or set of organs which alone can give a rule the force of law? In other words, shall we fall back upon the method of interposing a fixed procedure, or "constituted authority" between obedience and the law, making the commands of this authority law as long as the authority in general (even though certain particular commands are ignored) continues to receive the habitual obedience of the bulk of the community?

[16] It is true, of course, that in primitive society, as in modern states, many ethical rules are also political. Thus the rules of exogamy may be considered a matter for social enforcement.

[17] Doubtless the line *is* vague. But there is a line, certainly, as the example of customary rules of manners demonstrates. See also *infra*, note 22.

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When the proposition is stated in this form, we recognize it as equivalent to Austin's original definition, the deficiencies of which have been pointed out above.[18] It is true that certain of the difficulties there alluded to could be avoided by simplifying the "constituted authority" to a mere court. "That is law in a given society," the definition would then read, "which the courts declare to be law."[19] Although this would avoid the difficulty (referred to in criticizing Willoughby's theory) of accounting for the legal relationships within (and constituting) the "constituted authority" (or "sovereign"), the question would then arise: What about the case of a statute that is generally obeyed, but never comes before the courts? Is it not law? More than this: Suppose there are no courts. Suppose, however, that members of the society in question are bound together in kin groups for their mutual protection. Certain rules are recognized as binding, but there is no impartial tribunal to interpret the law. Self-help is the rule.[20] Clearly, this is a less desirable form of organization than one in which there are courts. But if in fact certain rules for the organization of group life are adhered to with reasonable regularity, are we to deny them the name of law? What else would we call them? Why should the word "custom," for instance, be extended beyond its ordinary meaning to include customs whose observance not only is regular but is enforced if the "custom" is not observed voluntarily. Why, in fact, should it be extended to include any customs that are considered as in some way obligatory, so that their non-observance is looked upon with disapprobation?[21]

Suppose, then, that resort be had to a substantive test to distinguish between customs that constitute political law and those that do not. Can the political be distinguished from the ethical or the religious on the basis of the matters that are subjected to regulation? A moment's reflection will serve to show the inade-

[18] Austin's definition in terms of sanction is, in fact, a particular form of procedural definition. See also the general criticism of this type of theory, *supra*.

[19] The practical advantages of this test for law as distinguished from custom are ably set forth by John Dickinson, in "Social Order and Political Authority," in this REVIEW, Vol. 23 (1929), at pp. 604–608.

[20] See Malinowski, *op. cit.*, *passim*, and especially pp. 76–80.

[21] If it is argued that now we are in a region where the distinctions between religious, ethical, and political rules have not been developed, one need only reflect that certain rules (*e.g.*, the performance of religious rites) are not considered a matter of *social* duty, while others are. Some violations, that is, give rise to the rights of certain individuals to take steps. Others are left to the gods for enforcement.

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quacy of this distinction. Thus, moral codes may regulate such matters as marriage and divorce; while these same affairs are also appropriate subjects for regulation by political law.

However, this suggests another whole category of definitions of law—definitions which are purely substantive, placing no reliance upon either obedience or sanction as a test. The idea of defining political law either by reference to formal characteristics, such as the *procedure* by which it is enacted (or declared), or by reference to the fact that it is enforced upon, or obeyed by, the bulk of the members of a given society, is comparatively modern. For long, the word was associated with right and reason, as, indeed, it still is in the words for "law" in many other languages: "*Recht*," "*droit*," "*diritto*," etc. Thomas Aquinas defined law as "an ordinance of reason for the general good, emanating from him who has the care of the community, and promulgated."[22] "A tyrannical law," declared Saint Thomas, "not being according to reason, is not, absolutely speaking, a law, but rather a perversion of law."[23]

Duguit, for example, among the moderns, insists that the state is subject to the rule of law (*la règle de droit*). This rule of law he defines in terms of the requirements of "social solidarity," or what we would call "interdependence." Similarly, the Dutch jurist, Krabbe, launches an attack upon the theory that law is what the state commands. He, too, is in search of an objective basis for law and is trying to get away from the doctrines of individual rights which accompanied the orthodox Austinian theory, and to substitute a theory that roots law more firmly in the needs and interests of society. In his effort to find something more readily apparent than "social solidarity," he hits upon the sense of, or feeling for, right (*Rechtsgefühl*).

We have already indicated that the substantive test fails to distinguish legal from non-legal customs. But broader criticisms also run against all such theories. In the first place, they open themselves to attack, from the juristic point of view, on the ground that they do not give a definition of law that can be applied with certainty. The standards are subjective, at least in the sense that each individual must apply them for himself. Consequently, there would be a great deal of dispute as to what, in a particular instance,

[22] *Aquinas Ethicus*, ed. Joseph Rickaby (New York, 1892), p. 267.
[23] *Ibid.*, p. 272.

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the law was. Such uncertainty, the jurists would contend, would defeat the very purpose of law—the maintenance of order.

It is not primarily on this basis, however, that these theories will be criticized here. While recognizing certainty as a highly desirable element in political law, I do not consider it to be of its essence, as I shall argue later on. An idea which does appear to me to be essential to our ordinary notion of political law is that there is a distinction between it and any standard of what ought to be. The idea of good and bad law seems to me to be too firmly imbedded in our concept of law to admit of any definition that would do away with this distinction. Yet, clearly, both the definition of law in terms of reason and that in terms of objective necessity ("social solidarity") would render meaningless any such distinction. They confuse ordinary law with natural law.

This same criticism cannot be directed against Krabbe's theory. For his theory does admit of a distinction between the actual sense of right of the community and the sense of right as it ought to be.[24] According to it, the test of political law is to be found in that which causes its observance; not an external sanction, however, but a conviction or feeling of moral obligation. This possibility was hinted at in the consideration of law and custom above, where it was suggested that "customs" that are felt as obligatory are thought of as something more than mere customs in the sense of behavior-patterns, and that at least some of them would be considered today as belonging to the class of political law.

Although a definition built around this test must fail along with the others, I desire, before pointing out its weakness, to discuss its strong points, for they are too frequently overlooked. This formula is not to be confused with those that equate law with some objective standard of right. It is not what *is* right but what is *believed* to be right that matters, according to this view of the subject. Let us test this particular idea. Can we think of any example of what is generally considered law that is not recognized by the bulk of the society[25] concerned as possessing some moral obligation—even if

[24] Thus he states: "What appears at a given time as a legal rule may perhaps be the result of an inadequate knowledge of the interests concerned or of prejudice in favor of special interests." *The Modern Idea of the State*, trans. by Sabine and Shepard (New York, 1930), p. 60.

[25] Note the qualification, "bulk of." It is important, and answers the objection to the effect that doubtless few of the Jews in Germany today, for example, recognize any modicum of moral validity in Nazi laws against them.

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only because of its contribution to the political purpose of order? Immediately there comes to our minds the case of pure absolutism. Could the subjects of such governments as those possessed by the ancient despotisms of Persia and Egypt, for example, be said to recognize any moral validity in the commands of the despots. Before we give an impulsive answer in the negative, we must reflect upon how easy it is for men to come to consider as right conditions which to outsiders appear not only as obviously wrong, but as exploitative of the very people who believe them to be right. Certainly the history of slavery in this country furnishes abundant testimony to this fact; for it was frequently not only the owners, but also the slaves themselves, who considered the institution a just one. This appears to be but one example of a universal tendency among men to translate the factual into the normative—not only to form ideas of what ought to be in terms of what is, but actually to equate the existent with the ideal.[26] Surely this tendency bears some relation to our inclination to measure all cooking by home cooking, even though it may fall short of explaining that preference on the part of husbands for mothers' cooking, of which wives are wont to complain. As further evidence of the general existence of this tendency, note that frequently our first impulse to defend a personal habit which may be challenged is supplanted by the realization and ready admission that, after all, it is wasteful of time, or otherwise harmful, and should be broken. Furthermore, we must avoid judging the despotisms of the past in the light of the far different conditions of modern times.[27] Some elements of justice could doubtless be found in the worst of them.

Thus it seems to me highly probable that in most states, today or in the past, the bulk of the people have considered the law as possessing a certain "rightness." This does not mean, of course, that they gave much, if any, rational thought to the matter. It simply means that they surrounded political regulations, along with other rules that they tolerated, with an aura of "oughtness." Moreover, and this is the significant point, it seems to me almost essential to the concept of law that such should be the case. We have found both the obedience and the sanction theories of law

[26] A stimulating discussion of this phenomenon as related to law is to be found in Georg Jellinek, *Allgemeine Staatslehre* (3rd ed., Berlin, 1929), pp. 337–344.

[27] Not to mention the fact that the most despotic governments of today appear, at least, to have the widest popular support.

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breaking down at just this point. Where a régime is enforced by pure force and fear—where there is not even toleration of injustice—it does not quite "click" with our sense of what is law. Furthermore, mere obedience to a rule fails to supply the distinction that we all feel between behavior-patterns directed toward a social purpose that have generally ascribed to them a quality of "oughtness" or "rightness" and those that do not. In the former case only is it generally felt, in the society concerned, that violation of the custom constitutes wrong-doing and justifies coercion.

Unfortunately, as indicated above, this theory, like all the others, has its flaw. It is incapable of supplying a distinction between political law and other norms. Many rules are recognized as "right," and yet are not "legal." We are faced with the old choice between substantive and formal criteria, both of which we have already discarded.[28] Nor is it quite accurate even to say that for a régime to be legal it must be generally considered as in some measure "right." That is not *quite* the point. It is conceivable that there might be régimes in which the bulk of the people tolerated the government, recognized it as "legitimate"—"legal"—and yet did not consider it "right" in the ethical sense. We have come, then, to this conclusion—that to be legal a rule must be recognized, by the bulk of the people whom it claims to regulate, as something akin to "right," yet not quite that—as something which we can only designate as "legal." This, in truth, is not a definition, for it attempts to define a concept in terms of itself. But it does tell us

[28] Krabbe himself accepted the formal test of majority decision. He justified this by arguing that the sense of right "attaches the highest value to having a single rule and sacrifices, if necessary, a particular content which might otherwise be preferred;" and by assuming various senses of right to be of equal value. (*Op. cit.*, p. 74 *et seq.*) But suppose that in a particular case the sense of right of the community does not, in fact, attach supreme value to having a single rule. What then is law? Krabbe's theory either fails entirely to answer this question, or else boils down, after all, to an assertion of the absolute legality of rules created in accordance with the majority principle. In other words, Krabbe failed to work out the relationship between the sense of right based upon the content of a particular rule and that based upon the value of having a single rule. Had he done so, he might have defined law somewhat after this fashion: "Law is that rule that is recognized as right for the reason that others recognize it as right, or for the reason that others obey it." Thus expressed, it would probably constitute the most plausible formulation of the theory dealt with above. It would even distinguish political from other law. Nevertheless, it would fail, both because some laws are not recognized as "right" in any sense, and also because, even among those that are so recognized, the recognition in many cases bears no relationship to any *logical* reason for considering the law "right."

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something. It tells us that *that which determines the legality of a rule exists in the minds of the pople who are subject to it.*[29]

Up to this point we have argued that solidarity, moral obligation, obedience, sanction, and sense of right or recognition of moral obligation all, in turn, break down as definitive tests of law. Nor do the concepts of "definite procedure," "sovereign," "constituted authority," or "initial hypothesis," either individually or in conjunction with any of the other suggested tests, fill the bill. We have thus been driven to the conclusion that there is no definition, in the strict sense, of "political law." It is not a simple notion; it is a compound notion. The best we can do is to get some conception of the ideas of which it is compounded.

It is to be noted that, while the definitions in terms of moral obligation or solidarity were comparatively easily discarded, when it came to those hinging around obedience and sanction, it was only by reference to what might be called "marginal" cases that they proved inadequate. And "recognition of right," while it failed badly as an exclusive test, did seem to be almost an essential element of the concept. We may conclude from this that those notions come close to expressing what we mean by law. It is conceivable that any one of them might be lacking at a given time without depriving rules of their legal character.[30] Generally, however, all three are present in some measure—especially obedience and sanction.[31] Austin did the natural thing when he hit upon obedience as the

[29] A word of explanation is needed here as to the part played by the notion of "political purpose." Undoubtedly, some measure of political purpose (or believed political purpose) is essential to the concept of law (in the limited sense that any of the elements of this shifting notion are "essential"). It is not dealt with here more fully for two reasons. In the first place, it would not suffice as a definitive test of law, for the definition of "political" involves all the old difficulties dealt with above. In the second place, as an important element of the concept, it has already been included in "recognition of rightness"; for the most likely way for a régime to secure recognition of ethical value is for it to bear some real or apparent relation to a political purpose—a purpose, that is to say, inclusive of the community as a whole.

[30] Even in the absence of "constituted authority," law (properly so designated) may fail to receive habitual obedience. See Malinowski's examples of the rules of exogamy, and of the father-son relationship among the Trobriand Islanders (*op. cit.*, pp. 76–84 and 100–111). And, for discussions of "law" without organized sanctions in the Middle Ages, see Max A. Shepard, "Sovereignty at the Crossroads," *Political Science Quarterly*, Vol. XLV (1930), at pp. 582–585, and C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), pp. 190 *ff.* and 365 *ff.*

[31] Thus, for most practical purposes within the modern state, Willoughby's designation of law as "those rules of conduct that the courts of justice apply in the exercise of their jurisdictions" suffices. *Op. cit.*, p. 143.

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test of law. It is the best single, objective test; for it is the ordinary external manifestation of that inner recognition which has been here identified as the true mark of law.[32]

We have further concluded that whether a particular combination of these factors is sufficient at a given time or place to constitute law depends upon whether the bulk of the society that the rules presume to regulate considers them sufficient—that is, whether it recognizes them as law. The question immediately suggests itself: How is an observer in "X" to know whether or not the people of "Y" recognize certain rules as law, if what constitutes law depends upon their recognition? But we are frequently confronted by just such indefinable notions as this, which yet we can and do deal with as though we knew what they meant. Take the concept of nationality. It has defied all attempts at precise definition. A common language, a common history, a definite home-country—all these tests break down when faced with the task of accounting for all cases of acknowledged nationality.[33] The notion is of the same sort as is law. It has well been said that the best way to determine a person's nationality is to ask him. This is strictly parallel to the solution here proposed for law. A subjective element inevitably enters into its definition. That does not mean that it has no objective basis. Then it would be futile indeed to talk about it. It does mean that it has no objective basis which is precisely the same in all cases. The subjective notion has been built up by the cumulative process of experience. Thus there has developed a substantial community of agreement as to its meaning without that meaning ever becoming precisely definable in terms of objective conditions.

Law, then, is dependent upon a popular state of mind, produced by conditions with which we are roughly familiar, which may include both actions and beliefs, and which may vary in their relative

[32] Binder's criticism of Austin's definition to the effect that it is like defining a man as the vertebrate that customarily occupies northern plains and gets a cold in the head in winter, although a caricature of juristic theory, aptly expresses its essential weakness. *Philosophie des Rechts* (Berlin, 1925), p. 255.

[33] Note the definition of nationality given in a recent study on the subject. It reads: "Nationality as a quality is the subjective corporate sentiment permanently present in and giving a sense of distinctive unity to the majority of the members of a particular civilized section of humanity, which at the same time objectively constitutes a distinct group by virtue of possessing certain collective attributes peculiar to it, such as homeland, language, religion, history, culture, or traditions." Bernard Joseph, *Nationality; Its Nature and Problems* (New Haven, 1929).

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importance and contents from case to case within certain rather narrow but vaguely defined limits. More specifically, a law is a rule of human conduct that receives from the bulk of the members of a given society a peculiar recognition—a recognition that is likely to be induced by certain objective factors (generally in combination), such as general obedience to the rule, the organization of sanctions for its enforcement and (less essentially) of procedures for its interpretation and application, and a general conviction of the "rightness" of the rule (or of the end which it is apparently designed to promote), especially when this conviction is reënforced by the knowledge that others believe it right, or at least act in accordance with it.

With this notion of law in mind, we return to the problem of sovereignty. Having secured an independent basis for our conception of law, we are left free, if it should prove desirable, to formulate our definition of sovereignty in terms of law. For the reason that, as a matter of history, the concept of sovereignty was a much later development than that of law, there would seem to be a certain *prima facie* reasonableness in such a procedure.

I have already expressed dissatisfaction with any definition of sovereignty in terms of "a sovereign," and approved of Kelsen's elimination of the latter term. Kelsen makes sovereignty merely the validity of a system of "norms"—by which he means their formal completeness, self-sufficiency. A body of law, or a state—which, according to Kelsen, is the same thing—is sovereign if it is not legally dependent upon any norm outside itself, and if it itself forms a logical whole in which all the parts may be deduced from a single norm which constitutes the apex of the system. This latter norm is the "initial hypothesis" upon which all law is based, and the character or justification of which, he argues, is not a juristic question. It was, it will be remembered, at this latter point that we parted company with Kelsen. Consequently, we have formulated a definition of law which, unlike Kelsen's, makes possible the existence of political law without the presence of a complete, self-contained legal system. With this addition, it seems to me that Kelsen's theory of sovereignty may be rendered more meaningful. Sovereignty, that is to say, is the quality possessed by a system of legal rules when, in fact, it forms a completely integrated and self-contained hierarchy.

Even this formulation, however, falls short in one respect.

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Whatever may have been the case historically, today at least, the concept definitely denotes legal omnipotence.[34] Thus it follows that the fundamental norm, if it is to be sovereign, not only must provide for its own definition, but must not contain any restrictions upon itself. This does not mean that a legal system (such as that of the United States) based upon a written constitution containing restrictions cannot be sovereign. Our Constitution not only contains restrictions, but it also provides a legal method for overcoming these restrictions—the amending clause. Thus it is the amending clause, rather than the Constitution as a whole, that is our "fundamental norm." A constitution that provided no means for its own amendment would, according to this theory, be law, but would not be quite sovereign. Incidentally, our own Constitution, owing to the limitation on the amending power itself, according to which no state may be deprived of its equal representation in the Senate without its own consent, comes perilously close to failing to achieve complete sovereignty—being saved only (if at all[35]) by grace of the phrase "without its own consent."

Finally, it must be remarked that no procedural devices (such as serve to give the quality of "sovereignty" to law) can guarantee *absolute* certainty. Thus, the amending clause itself may cease to be law. Or, to put the same point in more general language, if the fundamental norm at a particular moment is "The commands of 'A' shall be law," and if that rule is then changed (by an alteration of the popular consensus) to "The commands of 'B' shall be law," then there has been a change in the law even though that change

[34] Professor McIlwain's distinction between the "constitution" and the law which the sovereign creates does not seem to me to apply to our modern constitutions, such as that of the United States, wherein the instrument known as the "constitution" not only is law, but also is subordinate to a higher law—the amending clause. I would substitute "fundamental norm" where he uses "constitution." His theory necessarily follows different lines from those sketched herein because of the fact that he is searching not only for sovereignty but also for a (legal) "sovereign." See his "A Fragment on Sovereignty," *Political Science Quarterly*, Vol. 48 (1930), p. 101 and *passim*.

[35] Some writers maintain that the limitation on the amending power does deprive the United States of sovereignty. This view seems to me to confuse an added intricacy in the amending process with an absolute limitation. The position could be supported, however, by contending that a legal system that required unanimous consent for even the most improbable of possible alterations lacked sovereignty (although, presumably, the requirement of any extraordinary majority short of unanimity would be all right). I am not quite sure which construction more accurately fits the prevailing notion.

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was not registered by the appropriate procedure. Thus, in the strictest sense, it may be said that absolute sovereignty according to our definition is impossible. In fact, it might be said to be the paradox of sovereignty that it is an artificial creation for the purpose of introducing certainty into something (law) which, by its very nature, can never be rendered completely certain—although it is also its (law's) nature to strive after certainty! For practical purposes, however (and this is our revised and final definition), *the law of a group is said to possess sovereignty when it depends upon no rule external to itself, when it contains no absolute restrictions upon its own elaboration and growth, and when it imposes upon itself a definite procedure for the precise and definitive determination of what the law is in a particular case.*[36]

The time has now arrived for us to apply the combined notions of law and sovereignty. What is the test of law in a sovereign system of law? The literal answer to the question is obvious, for it flows directly from the definitions themselves. If the whole body of rules meets the test of recognition, and is possessed of sovereignty, then the validity of any particular rule may be definitively determined by reference to the machinery for that purpose furnished by the law itself. Thus, in this country, a decision by the Supreme Court is law. In certain cases, the decisions of lower courts, or of other organs of government, may be law, when it is legally so provided.

Suppose, however, that, according to the definition of sovereignty, a certain rule would appear to be law, and yet the rule did not meet the original test of law. Suppose, that is to say, that a rule that had received the stamp of validity of the highest stage of the legal procedure—the "official imprimatur of the state"—was

[36] This is, of course, a purely juristic definition. It is, that is to say, a definition of "legal" sovereignty, not of "political" sovereignty. It may be an unfortunate usage that has given the word "sovereignty" these two different senses; but it is the fact, and I see no point in arbitrarily selecting one of the uses as the "proper" one and ruling out the other. See note 3, *supra*.

In so far as the idea of self-definition is an addition to Kelsen's formula, it seems to me to be a necessary one. A system of substantive legal rules might, in a sense, be formally complete, yet, if there was no provision for their application to a particular case, according to rules provided for the purpose, the whole body of law could hardly be said to be sovereign. With this addition, it becomes unnecessary to include in the definition of sovereignty any direct reference to a state or political organization, for the necessity of some such machinery is implied in the requirement of self-definition.

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not generally recognized as law. Such a case would truly be an example of nullification. Clearly, the bulk of the population cannot at one and the same time recognize the legality of a régime that enacts a certain rule according to due form, and at the same time refuse to recognize the rule in question. If actually the legality of a particular rule is not recognized, the rule is in fact nullified—not law—and the legal machinery of the "constituted authority" has been changed sufficiently to admit of this nullification. This can only mean that the legal system was not, or at least momentarily ceased to be, sovereign.

When thus stated, it becomes clear that cases of nullification will be exceedingly rare.[37] A statute making it illegal to kiss one's wife on Sunday would probably meet the test of law as long as no attempt was made to enforce it. But, in this country, at least, it would probably be upon that condition only. If any serious attempt were made to enforce it, a change would be brought about, whether within or without the procedure provided by the "sovereign" body of law. A better example is furnished by the case in which it is practically impossible to bring about a certain change in the law by means of legal procedure provided for the purpose, as in the case of the limitation of the amending clause of the United States Constitution, already referred to. It is clear that no procedural means is provided for the precise determination of a change in this limitation. Yet, of course, the law on this point might, in fact, change. Nevada might be completely depopulated, except for two citizens eligible for the Senate. Under such circumstances, it would not be hard to imagine that the rest of the country would refuse to recognize as law the so-called legal (constitutional) fetters which prohibited a change being made without the consent of these two people. Certainly if the "law" was violated in this respect, people would not consider all subsequent proceedings of the Senate illegal; but, on the contrary, they would recognize them as legal.

Again, let us consider the case of the English constitution. Is it law? Suppose Parliament should pass an act abolishing the king's veto power. And suppose, further, that the king should veto this act and also the next succeeding act of Parliament. Would the latter act be law? The decision must hinge upon the consequences.

[37] It is important to note the distinction between ceasing to recognize a rule as law—nullification—and ceasing to consider it morally binding.

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(In this sense, at least, all law is based upon consent, even if not necessarily voluntary consent.) There is nothing inconsistent about calling certain parts of the English constitution "law," even though they may never have been put in statute form. The fact that Parliament could probably change it merely proves that it is not "higher law." There is no qualitative difference.

One more particular application needs to be dealt with: that is the case of international law. A full treatment of the nature of international law would require consideration at much greater length than would be fitting here; consequently, what will be said on the subject now must be summary and dogmatic. It is intended only to demonstrate that the theory of law adduced herein not only can be made to fit the case of international law, but also, it is believed, fits it rather better than other theories.

To Austin, international law was not law at all, because it lacked the sanction of a sovereign political superior. Other jurists, wishing to avoid this result without falling back upon the concept of natural law, have adopted the formula that law is that which gets itself obeyed, or observed. We have dealt with this theory above. In the hands of some, it resolves itself into a complete identification of law with custom. For the most part, however, writers in the field of international law imply a distinction between certain international usages which they say are observed out of mere "comity" and others to which they attribute a legal character. Generally, these same writers make no attempt to explain what constitutes this distinction.

Not only does the obedience test fail to distinguish law from comity, but it also attributes legal validity to relationships of obedience which are established and maintained purely by force. It has been argued above that any definition of law that makes such relationships *ipso facto* law is unsatisfactory. Of course, it may be true that the international community does in certain cases recognize the product of might as right. All that is being contended here is that in such cases the legality of the situation derives from this general "recognition," and not directly from the mere fact of force-imposed obedience.

Thus it is implied that I should consider much "international law" to be law in the sense of my definition. It is readily apparent, however, that at present the body of international law is far from being possessed of sovereignty. It has practically no compulsory

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procedure for determining what the law is. That determination is left up to each state for itself, with the consequent probability of disagreement in any particular case, so that objectively there is no real determination at all. This is a great deficiency in a legal system. But it destroys its sovereignty rather than its legal character.

These applications of the theory point the way to certain further deductions as to the relationship between law and sovereignty. Thus it may be stated that when an independent legal system possesses a procedure that insures its own definition, there is a strong presumption in favor of the legal character of any rule that has received the stamp of validity provided by this procedure. This presumption can be overcome in one of two ways, and in those ways only. In the first place, when the "procedure" ceases to command the recognition of the bulk of the people, obviously the rules made in accordance with it lose their presumptive legal quality. Such is preëminently the case when there is a revolution. Revolutions, of course, may supplant the whole of the preëxisting legal system (and, more specifically, the procedural part of that system) or, as is much more likely to be the case, only a part of it.

Or, in the second place, if the "procedure," though still recognized in general, does not serve to secure the recognition of a particular rule, made in accordance with it, as "law," then clearly the presumption is overcome. The rule is not law. This is the case of nullification, dealt with above.

Thus, although the difference between, say, international law and the laws of the United States is one of degree, yet on account of the fact that the latter possesses the characteristic of sovereignty, the difference is so great that the penumbra of uncertainty as to what is law is reduced, in the United States, to the vanishing point. Sovereign law possesses certainty. But a chain is no stronger than its weakest link, nor a house than its foundations. The certainty of law even in a sovereign state is ultimately contingent upon its general recognition. But of this general recognition there can ordinarily be no doubt. When we reflect, too, upon the resources—including organized violence, in the last instance—which the modern state has at hand for producing that recognition, the residual element of uncertainty need not disturb our tranquility.

In conclusion, it remains only to try to set in perspective what it is hoped has been accomplished. "Law," even "political law," is an

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exceedingly slippery term. Hence the continual recourse to the use of qualifying words and phrases to which writers on the subject are addicted. Thus customary law and international law are designated as "primitive" or "imperfect" types of law—as law of a totally different quality from that which exists in sovereign states.[38] Or, again, we have a feeling that in certain cases there is a difference between "formal" and "substantive" law. Yet, among all these various uses, there runs a common meaning. It is this common meaning that I have attempted to get at. It is true that this can be accomplished only by leaving the term with a margin of vagueness. But it is a narrow margin. I feel, moreover, that in doing this there is a distinct advantage over the more precise definitions, the precision of which is gained only at the price of ruling out certain phenomena which do in fact accord with the popular conception of "law."[39] Furthermore—and this is important—where, as generally, we are dealing with "sovereign law," this element of uncertainty is practically eliminated. The common meaning of law, which we have attempted to ascertain, is based neither purely upon substance nor purely upon form. It is nearer the latter. But actually it is neither one. Rather, it relates to a state of mind—a consensus. Thus it follows that absolute certainty, or definiteness, is not of the essence of law. However, it is the nature of law to approximate this; for so much is implied by its definition as a "rule." Finally, controversies over the nature of sovereignty, it is hoped, have been resolved by pointing out that the essence of this concept is the very element of formal certainty (as applied to a body of law) that is so important, and yet which is not part of the concept of law itself.

[38] For summaries of such views regarding international law, see H. Lauterpacht, *The Function of Law in the International Community* (Oxford, 1933), pp.400–407.

[39] Professor Willoughby himself recognizes the possibility of other constructions than that which begins, as he says, by postulating the state as the *fons et origo* of law. *Op. cit.*, p. 30.

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MILITANT DEMOCRACY AND FUNDAMENTAL RIGHTS, II*

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II

Some Illustrations of Militant Democracy. Before a more systematic account of anti-fascist legislation in Europe is undertaken, recent developments in several countries may be reviewed as illustrating what militant democracy can achieve against subversive extremism when the will to survive is coupled with appropriate measures for combatting fascist techniques.

1. *Finland:* From the start, the Finnish Republic was particularly exposed to radicalism both from left and right. The newly established state was wholly devoid of previous experience in self-government, shaken by violent nationalism, bordered by bolshevik Russia, yet within the orbit of German imperialism; no other country seemed more predestined to go fascist. Yet Finland staved off fascism as well as bolshevism. At first, the political situation was not unlike that of the Weimar Republic in the years of disintegration. The Communist party, declared illegal by the High Tribunal as early as 1925, reconstituted itself and, in 1929, obtained a large representation in the Riksdag, thereby blocking any constitutional reform. Under the decidedly extra-constitutional pressure of the nationalist and semi-fascist movement of the Lapuans, the Communists were so intimidated that nationalists, and progressives (bourgeois liberals), against the opposition of the social Democrats, were able to carry the constitutional reforms which not only strengthened the position of the government but also eventually barred subversive parties—meaning, at that time, the Communists—from national and communal representation. The Communist party finally disappeared from political life. Concomitantly, the fundamental rights of association, free speech and press, and freedom to combine were severely curtailed. In particular, the statute of November 28, 1930, proscribed the formation, activities, and support of all parties aiming at forceful change of the political and social order. When, however, after the elimination of

* The present and concluding instalment of this article covers developments to May 1, 1937.

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the Red danger, the Lapuan movement became increasingly overbearing, and also resorted to lawlessness and terrorism against the constitutional government, the acting cabinet, under the presidency of the "liberator" of Finland, Svinhufvud, invoked against the Lapuans the same laws by which Communism had been crushed. In December, 1931, the Lapuans, in the Mäntsillä uprising, tried to seize power by armed rebellion, but the movement collapsed immediately, when it encountered, in March, 1932, militant application of the extraordinary powers. The Finnish democracy was saved also from fascism. After that, President Svinhufvud was able to steer a middle course and to stabilize the country as a genuine democracy. The government passed the necessary legislation against the recurrence of fascist plots by the bills of 1933 forbidding the formation of private armies within political parties, and of 1934 prohibiting the ostentatious wearing of political uniforms and other symbols of political allegiance. Although a fascist party was permitted to participate in political life, enforcement of the anti-extremist legislation effectively crippled its aggressiveness, and, deprived of its military regalia, it became only one among other ordinary political parties of scant importance. Thus, Finland's political status was changed from that of a Baltic state of the authoritarian type to that of a member of the Scandinavian family of democracies. The result of this evolution was confirmed by the election, in February, 1937, of Mr. Kallio, the Agrarian leader, in succession to Mr. Svinhufvud as president of the Republic.

2. *Estonia:* Another striking illustration of militant democracy is offered by Estonia. Here again, a country of political and economic instability, located precariously between Red and Brown, successfully withstood both communism and fascism. After Hitler's seizure of power in Germany, the menacing pressure of fascist groups increased also in Estonia. The problem took once more the post-war turn of constitutional reform usually resorted to when it becomes necessary to strengthen the executive against parliamentary disintegration. By the reform of 1933–34, the president became nothing less than an authoritarian leader. The reform movement was sponsored and carried through by the "liberators," a true replica of the National Socialist party in Germany. When, in January, 1934, the new constitution came into force, the "liberators" hoped to utilize the increased powers of the executive

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over the legislative for their own plans and prepared for a forceful overthrow of the government by a *coup d'état*, the so-called Larka plot of March, 1934. But President Päts used against fascism exactly the same extraordinary powers that the reform had conferred upon him. Not only the local fascist organizations which the former Baltic landowners of German extraction had built up were dissolved, but also the "liberators" were proscribed by martial law. Emergency powers were widely applied to maintain order and peace through the vigilance of the President, a second attempt of the fascists to seize power by force was nipped in the bud (the so-called Larka plot of December, 1935). It is true that since 1934 Estonia's political system more or less reflects the authoritarian type of government, with almost unlimited powers vested in the President on the basis of the one-party system, the government's Fatherland party. But the suspension of constitutional government was clearly meant to be of transitional character. In February, 1936, an honest plebiscite went in favor of a full restoration of democracy and of a constituent assembly. At the general elections for the constituent assembly, in December, 1936, both communists and fascists were excluded from the ticket, and a democratic constitution of the new authoritarian type may be expected. The Estonian example demonstrates the preservation of democracy by undemocratic methods and typifies the situation of democracy at war against fascism.

3. *Austria:* For a short while, between March, 1933, and February, 1934, the Austrian Republic seemed to take a similar course. The government of Dollfuss was at first intent on avoiding fascism as well as communism, and in May, 1933, it outlawed subversive movements of all kinds impartially. In February, 1934, however, Dollfuss ruthlessly crushed the Socialist party, which was intensely loyal to constitutional government, and established a one-party state, thus openly flouting the rule of law and turning Austria into a fascist country without even the pretext of constitutional government. The attempt of the dominating minority group to keep out national socialism by a pitiful imitation of its emotional propaganda seems doomed to failure. After the conclusion of the German-Austrian agreement of July, 1936, the transformation of Austria into a National Socialist vassal state is only a matter of time and tactics, which even successful monarchical restoration may temporarily delay yet not ultimately prevent.

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4. *Czechoslovakia:* No doubt the most conspicuous example of a democratic country maintaining its fundamental structure against overwhelming odds is Czechoslovakia. Here, on this solitary island in the surrounding sea of dictatorial and authoritarian states, the internal situation is distressingly complicated by the existence of a strong minority of Sudetic Germans, who, once the dominating class, could never quite reconcile themselves to coöperation with the Czech majority controlling the government. Among the Sudetic Germans, whose masses live close to the German border, more and more a dangerous spirit of irredentism grew up, duly fostered by the rising power of National Socialist Germany. In addition, the parliamentary administration, otherwise admirably handled, proved, as everywhere, too slow and cumbersome for the exigencies of the economic crisis which weighed heavily on the highly industrialized country. That the democratic structure and the national integrity were none the less maintained is due to two causes. In the first place, the successive coalition governments, acting under sweeping enabling laws, ruled more and more by decrees under the ultimate control of the parliament. Thus Czechoslovakia bowed to the new version of parliamentary democracy after 1929. Although this course was certainly open to grave constitutional objections, the highest courts and the parliamentary bodies, which alone can raise the issue of the constitutionality of these far-reaching measures before the Supreme Constitutional Tribunal, wisely refrained from being over-legalistic. Slowly, the Czechoslovakian political system was transformed into the authoritarian, or "disciplined," democracy which the emergency situation in the national and international sphere demanded. On the other hand, the government reacted vigorously against the fascist technique of undermining the constitutional system and the democratic spirit of the institutions. In the report of the committee of the House of Representatives on constitutional and legal questions, introducing the law of October, 1933, concerning the suspension and dissolution of subversive parties, we read the following sentences, which aptly describe the existing emergency situation: "It is evident that all constructive and politically responsible factors are confronted by the necessity of making provisions for the defense of the most cherished possessions of the Republic and of the citizens, in order to check the activities inimical to the state

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. . . In politics also the defense is shaped according to the fighting methods of the assailant."

In accordance with these policies, the Czechoslovakian Republic enacted the most comprehensive and intelligent legislation against fascism now in existence in any modern state, and, what is more, the authorities used the powers conferred upon them with undaunted energy. As early as 1923, an act for the "protection of the Republic" shielded the integrity of the Republic and of republican-democratic institutions. In view of the more subtle methods of the fascists, who shrank back from open defiance of the law and pursued their aims under cover of the exercise of fundamental constitutional rights, more appropriate measures had to be devised. In October, 1933, shortly after the avowedly National Socialist German parties had been prohibited by a mere administrative order, a statute was passed which empowered the government to suspend and dissolve any subversive party, group, movement, or association whose activity, in the opinion of the government, was "apt to endanger the constitutional unity, the integrity, the republican-democratic form of the state or the safety of the Czechoslovakian Republic." Membership in an association with subversive aims was deemed sufficient evidence of guilt. Reconstitution of a dissolved party under another name or form (*tarning*) is unlawful; members of the outlawed party are ineligible for parliamentary or public office; active members forfeit their parliamentary or official functions; property of an outlawed association is to be confiscated; uniforms and all symbols indicating sympathy for the proscribed movement are prohibited; freedom of speech, press, assembly, and movement within the state for all involved in or suspected of subversive activities is heavily curtailed. In addition, members of and sympathizers with such parties may be subjected to close surveillance and control by the police. In conformity with the rule-of-law principle, the final decision on the legality of an order suspending or dissolving an allegedly subversive party lies with the Supreme Administrative Tribunal. Thereafter, no subversive extremist or revolutionary movement could raise its head, although a Czech fascist party was permitted to continue as an ordinary political party. Communism had previously adjusted its program and tactics to the democratic environment.

In view of the determination of the government to defend de-

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mocracy, the parties fundamentally opposed to the present form of the state had to conform to the laws. Avoiding any open defiance, and also refraining from unlawful or militaristic propaganda, the formerly subversive forces of the German opposition organized themselves into a normal political party. At the general elections of May, 1935, the "Sudetendeutsche Heimatpartei" of Herr Konrad Henlein emerged suddenly as the second strongest party in Parliament, rallying almost seventy per cent of the German population under its banner. It was evident that even the most foresighted legislation could not prevent the forces of the opposition from organizing themselves efficiently. But under threat of the act of 1933 and the determination of the government to enforce it, the Henlein party acted scrupulously in accordance with the law, the constitution, and the rules of the parliamentary game. In addition, the act had proved an effective device for preventing the opposition from becoming a military organization. Yet the government anticipated the potential danger arising from an inimical population strongly organized in political cadres and bordering on an unfriendly neighbor. A new and far more drastic statute was passed in May, 1936, styled an "Act for the Defense of the State." Again no heed was paid to well-substantiated objections which constitutional legalism did not fail to raise. In normal times, this piece of legislation—which in fact is a new constitution—would have been legally impossible unless passed as a constitutional amendment. But it was justified by the emergency situation. The statute moulds the entire state, and particularly the border districts, into a fighting unit in preparation for the impending war by abolishing, to a large extent, under wide discretionary powers of the government, constitutional guarantees and constitutional rights. It provides, should need arise, for martial law in peacetime, and it anticipates the totalitarian war by the totalitarian peace. At present, only an open rebellion, presumably supported by intervention from abroad, could overturn the existing system of government. In Czechoslovakia, the postulate of democracy at war is fulfilled to the letter.

In weighing the anti-fascist legislation of Czechoslovakia, it may safely be argued that, against all expectation, it has preserved the internal peace of the state, the stability of the Republic, and, with due reservations, also the rule of law, even though it could not inspire loyalty in the hearts of those sections of the popula-

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tion which are still averse to the state. Within the limits of the possible, it immunized the state against fascist techniques and prepared the country for defense if and when a final clash of doctrines can no longer be avoided. Manifestly, this anti-fascist legislation has rendered an invaluable service to the peace of Europe.

III

Summary of Anti-Fascist Legislation. The following survey tries to summarize the contents and purposes of anti-fascist legislation in Europe. The principal democratic countries included are France, Belgium, the Netherlands, England, the Irish Free State, Sweden, Norway, Denmark, Finland, Switzerland, and Czechoslovakia. Reference is made occasionally also to Lithuania, notwithstanding that this state clearly belongs to the new type of "authoritarian," or "disciplined," democracy of the Baltic pattern. Space forbids any detailed or exhaustive description, and no juridical evaluation is intended. Although the comprehensiveness of the measures adopted varies from country to country, it will be seen that, without exception, all democracies have resorted to statutory precautions and legislative defense of one kind or another.

As to the political effect of the measures for keeping incipient fascism under control, it may be said that although local conditions are widely different, behind national diversities considerable uniformity is clearly visible, corresponding to the uniformity of the fascist technique in undermining the democratic state. Naturally, the chances of ultimate success in holding the various local fascist movements at bay are proportional to the time of the enactment of restraining measures (whether early or late), the elaborateness of the measures and the skill with which they have been drafted, the prevailing legal traditions and techniques, and, above all, the zeal and determination in enforcement displayed by the administrative and judicial authorities. The appropriate time for enactment was certainly shortly after Germany went National Socialist. Countries which unduly delayed legislation found it increasingly difficult to quell movements that had already cast their spell and taken root in the public attention.

Legislation is usually directed also against subversive movements or groups other than fascist or National Socialist if they are considered detrimental to the democratic state. In the main, however, the laws are drafted in order to match the particular kind of

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technique applied by fascism. It should be noted that in democratic countries, with the exception of France, there is, on the whole, no conspicuous permeation of the people by communism. This is true not only because the comparatively high standard of living in democratic countries and the social environment do not encourage it, but also because where radicalism exists it is more or less merged with and absorbed by official moderate socialism, and thus neutralized.

The various legislative measures may be grouped along the following lines:

(1) To deal with open rebellion, insurrection, armed uprising, sedition, extended riots, conspiracy against the state—in short, with every overt act bordering on or falling in the category of high treason—the ordinary criminal codes of all countries are adequately equipped. Unless a state has reached the stage of actual political disintegration, the regular forces of the police or the army are amply sufficient to suppress high treason of individuals or rebellion undertaken by larger groups. As fascism and communism had ample opportunity to learn from experience, a determined government backed by a loyal army is invariably capable of quelling a *putsch* or *coup d'état*, or even an extended insurrection from left or right—for example, the Kapp *putsch* (1920) and the Hitler *putsch* (1923) in Germany; the Gayda *putsch* in Czechoslovakia (1926); the Larka uprising in Estonia (1935); the Mäntsillä uprising in Finland (1931–32); rebellions in Austria (1934), Spain (1934), Greece (1935), Ireland (1935); the military revolt on board the *De Zeven Provincien* in the Dutch East Indies (1933). Hence, the fascist strategists have grown particularly careful not to commit any overt act of rebellion until the subtler and studiously lawful methods of undermining the state and establishing the atmosphere of double legality warrant the ultimate seizure of power by *coup d'état*. Nevertheless, several democracies have deemed it advisable to strengthen their criminal codes or to introduce special legislation against high treason (Czechoslovakia in 1923 and after, Belgium in 1934). Similar provisions were proposed in Switzerland (1934 and 1936). In addition, most states are prepared to make full use of martial law, and of extraordinary powers for state of siege, in case of a rebellion spreading over their territories.

(2) The most comprehensive and effective measure against fascism consists in proscribing subversive movements altogether.

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Only in isolated instances is legislation drafted so as to prohibit specifically named parties. This was the case when, in 1933, Austria proscribed both National Socialism and communism, together with their affiliated organizations. As a rule, however, such legislation is formulated very carefully in order to avoid open discrimination against any particular political movement, thereby maintaining, at least nominally, the democratic principles of equality before the law and due process under the rule of law. Thus not even the anti-communist statutes in Finland, Latvia, and Lithuania singled out left extremism for prohibition, although the communists were the obvious target. To have sinned glaringly against the fundamental democratic tenet of political equality is the doubtful distinction of the oldest and most venerable democracy, i.e., Switzerland. The federal Public Order Bill, proposed by the Federal Council in December, 1936, tried to outlaw the Communist party alone by naming it explicitly as dangerous to the state—a wholly unjustified discrimination which so stirred public opinion that the bill had to be changed, during the parliamentary debates in the Ständerat, into a general ban of all subversive movements. While public resentment against such crude violations of democratic traditions had not yet subsided, the cantons of Neuchâtel and Geneva outlawed, by cantonal acts of 1937, the Communist party within their borders. Although in an ultra-bourgeois country like Switzerland communism has perhaps less chance than in any other European democracy, the anti-communist law was accepted by referendum by a large majority in Neuchâtel, and a similar result may be expected in Geneva. A statute which openly discriminated against communism was passed in March, 1937, in the Canadian province of Quebec (the so-called "Padlock Bill"), and also one in Luxemburg in April, 1937.

With these exceptions, anti-extremist legislation in all democratic states applies the ban indiscriminately to all political groupings which fall under the general category of a subversive party, an unlawful association, or an organization inimical to the state. Specific legal definitions of what constitutes a subversive party or organization are usually avoided. The fact, however, that a group, by its organization or aims, intends or is prepared unlawfully to usurp functions ordinarily belonging to the regular state authorities is as a rule sufficiently indicative of its subversive character. The decision as to whether a group is to be declared

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illegal lies with the discretionary power of the government, subject, in some countries, to an appeal to a court of the last instance. "Guilt by association" is generally deemed sufficient, even if malicious intent or knowledge of the subversive aims of the association cannot be proved against the individual member. *Groupements de fait* are treated as regularly constituted political parties or organizations—a provision which strikes a blow at the ominous notion of the "movement" as distinguished from an ordinary political party. Reconstituting a proscribed party under any pretense whatsoever is a crime. This measure has not proved sufficient, however, to prevent outlawed parties from experiencing rebirth as officially constituted, and therefore legally recognized, parties. Illustrations are furnished by the reappearance in Czechoslovakia of the German National Socialists as "Sudetendeutsche Partei," of the French *Croix de Feu* as the French Social party (at present under judicial investigation), and of the Iron Guard in Rumania as an "All-For-The-Country party." At any rate, if the prohibition of a party is coupled with the outlawing of military party activities, the actual danger of creating a double legality is alleviated to a considerable extent. Consequences of the dissolution of a party are eventually confiscation and liquidation of its property (Czechoslovakia (1933), France (1936), Great Britain (1936)).

In this connection, the situation in Switzerland again deserves attention. In March, 1934, a federal Public Order Bill—on the whole moderate and dealing only with actual gaps in existing federal legislation—was rejected by referendum. The proposal was aimed at subversive associations only in so far as they frustrated or impeded measures of the authorities by unlawful means or arrogated to themselves official powers, and it did not interfere with political parties proper. A similarly restricted cantonal measure failed in 1934 in Zürich, while in the canton of Ticino, obviously more exposed to fascist propaganda from neighboring Italy, an appropriate statute was carried in the same year. In December, 1936, the Federal Council submitted to the federal parliament a new and far more sweeping draft of a resolution styled "For the Protection of Public Order and Safety," which, if adopted, will provide Switzerland with an elaborate and comprehensive system of legislative and administrative defense against subversive activities, second in Europe only to the armory of defense existing in Czechoslovakia. The proposal was characterized as "urgent,"

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which, according to the Swiss constitution, implies that the bill, after acceptance by both houses of the federal parliament, should not be submitted to the referendum otherwise prescribed for federal bills. Conspicuous features of the draft proposal are the outspoken and admitted discrimination against the Communist party which has been mentioned, and, in addition, the fact that it couples sound legislative devices for the protection of democracy against subversive movements with far-reaching provisions intended to prevent incitement to disaffection among the armed forces. Even reasoned criticism of the army can be punished severely. Public opinion, including large sections of the Right bourgeoisie, is strongly opposed to the measure, which manifestly goes far beyond the scope of protecting the legally constituted government against subversive methods and cuts deeply into Swiss liberal traditions. In view of this widespread resentment, the fate of the proposal is at the time of writing doubtful. The National Council shelved discussion until the spring session of 1937, thereby denying the "urgent" character of the bill which the government, evidently shying from a popular vote, seems unwilling to waive. Although even during the debates in the Ständerat drastic modifications were adopted, separating partisan intentions from general protective measures, the bill might scarcely fare better than its predecessors if submitted to the people. In the meantime, it is evident that the Swiss democracy is not protected adequately against infiltration by the fascist technique of propaganda. It may be added to the record here that the present Federal Council is itself by no means beyond suspicion of pro-fascist leanings, and that the "Red-menace" scare has driven large sections of the Swiss bourgeoisie into an almost hysterical blindness toward the danger from fascism.

(3) All democratic states have enacted legislation against the formation of private para-military armies of political parties and against the wearing of political uniforms or parts thereof (badges, armlets) and the bearing of any other symbols (flags, banners, emblems, streamers, and pennants) which serve to denote the political opinion of the person in public. These provisions—too light-heartedly and facetiously called "bills against indoctrinary haberdashery"—strike at the roots of the fascist technique of propaganda, namely, self-advertisement and intimidation of others. The military garb symbolizes and crystallizes the mystical

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comradeship of arms so essential to the emotional needs of fascism. More or less identical "blouse-laws" were passed in Sweden (1933), Norway (1933), Denmark (1933), Finland (1934), the Netherlands (1934), Czechoslovakia (1933 and 1936), Switzerland (1933), Austria (1933), Belgium (1934), and, very belatedly and only under the provocation of deliberate disturbances of the peace caused by Mosley's Blackshirts, in England (1936). For the sake of comparison, it may be mentioned that prior to 1933 no stronghanded action was taken in Germany against political uniforms and the formation of private armies, partly because of political weakness and actual connivance of the authorities of the Reich, unwilling to discriminate against a "national" movement, partly because of constitutional jealousies arising from the police power of the states. A federal ordinance of the Reich-president, finally enacted in the spring of 1932, was repealed after less than two months. No action at all was taken in Spain; and in the Irish Free State, an anti-uniform bill was rejected by the Senate (1934), which led ultimately to the abolition of that body.

(4) While uniforms are usually the manifest sign of an organization operating on military lines, it is even more important for democratic states to forestall the formation of military bands or private party militias. Created originally as "stewards" for the protection of party rallies from undesirable interruptions and as bodyguards for the "leaders," they have a tendency to grow into private armies for offensive purposes and to prepare for the ultimate seizure of power. Thus they constitute intolerable competitors of the state's own armed forces. Many states, therefore, have prohibited the formation of private armies, party militias, and bands for any purpose whatsoever, as stewards or as assault troops or as bodyguards, as in Sweden (1934), Denmark (1934), Belgium (1934), the Irish Free State (1934), the canton of Zürich (1934), France (1936), Holland (1936)—proposed also in Switzerland (1936). Equally detrimental to public authority are military exercises and military training not controlled and supervised by the state, even when practised by men without uniforms. Consequently, the prohibition of party uniforms should generally be accompanied and supplemented by making military training by unauthorized persons illegal. Such statutes were passed in Belgium (1934), the canton of Zürich (1934), Great Britain (1936), and France (1936).

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(5) All democracies have taken legislative precaution against illicit manufacture, transport, wearing, possession, and use of firearms or of other offensive weapons of any kind, or they have strengthened already existing prohibitions (Czechoslovakia [1923], Belgium [1934], France [1936], Great Britain [1937]). In Switzerland, after provisions included in a federal statute had been rejected by the referendum of 1935, some of the cantons, e.g., Zürich, Fribourg, St. Gall, and Basle City, stepped into the gap. The ultimate efficacy of such measures, however, continues rather dubious, even if police and army remain loyal to the state, because during these turbulent years of political strife in Europe large quantities of arms have changed hands in countries through smuggling, hiding, and secret storage. Complete internal and private disarmament is at best difficult when a general and official armament race is on; but a vigilant police force should be in a position to prevent at least any large-scale accumulation of arms in private hands.

(6) A series of new statutes deal with the abuse of parliamentary institutions by political extremism. Taken together, these measures constitute the first and, as yet, rather timid effort for safeguarding the parliamentary technique from being utilized for purposes of subversive propaganda and extremist action. When the Rexist "leader," Léon Degrelle, in March, 1937, forced the resignation not only of the acting member of the Rexist party for the arrondissement of Brussels, but also of the substitute nominees on the Rexist party ticket, solely for the purpose of causing a by-election in which he could advertise as a legitimate party candidate the aims of the fascist party, the Belgian Parliament passed a law by which such frivolous by-elections are prohibited in the future. A constitutional amendment in the Netherlands, adopted in April, 1937, by overwhelming majorities in both chambers, permits the exclusion from representation in political bodies (national, provincial, and communal) of adherents of subversive parties who advocate alteration of the existing form of government by unlawful means. Extremist groups may thus be deprived of their official spokesmen, the edge thereby being taken off subversive propaganda, particularly since another constitutional amendment, enacted simultaneously, restricts also the parliamentary immunity, which no longer can be used for treasonable activities. Although these amendments are still subject to acceptance by two-thirds of

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the new chamber, there is no doubt that this sound reform will reach the statute-book in due course. Similarly, the new French press law, at present under consideration in the Senate, makes it impossible for legally responsible editors to escape prosecution for seditious propaganda or other unlawful activities under cover of parliamentary immunity. As in the Netherlands, the Czechoslovakian statute of 1933 declares the mandates of representatives of subversive parties forfeited, and in both countries such vacancies are not filled until the next election, in which, in Czechoslovakia, parties dissolved because of their subversive aims cannot participate.

(7) Other recently passed measures of democratic states aim at curbing excesses of political strife. The ordinary criminal codes or the common law of most countries (Sweden, Norway, Finland, the Netherlands, Great Britain, also Germany before 1933) contain provisions dealing with incitement to violence or hatred against other sections of the population. In addition, it became necessary to alleviate political acrimony when it was directed against persons or classes of persons or institutions usually singled out for attack by fascism. Many states have provided remedies by forbidding incitement and agitation against and baiting of particular sections of the people because of their race, political attitude, or religious creed—in particular, because of their allegiance to the existing republican and democratic form of government (Czechoslovakia [1933], the Netherlands [1934], also the Canadian province of Manitoba [1934]). While statutory protection was thus given, in the main, to religions exposed to the anti-religious propaganda of communists, such measures are intended also to prevent or mitigate the violent campaigning against Jews and Marxists. In this connection, it should be remembered that under the Weimar Republic, owing to the ill-advised yet inveterate attitude of the courts in interpreting the criminal code, Jews and Marxists as members of a group were left entirely without protection if they could not prove that the attack was directed personally against the complainant.

(8) Political strife carried by the fascists to the extreme of organized hooliganism made the fundamental right of assembly more or less a sham. Creating disturbances in or wrecking meetings of opposing or constitutional parties not only proved a favorite test of the fighting spirit of militarized parties ("meeting-hall-battles"

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—"*Saalschlacht*"), but also deterred peaceable citizens from attending meetings of their own selection. The task of the police to keep peace and order at meetings and public processions became increasingly difficult. The ordinary criminal codes being wholly insufficient to curb the deliberate tactics of extremist parties, more stringent legislation was introduced in Czechoslovakia (1923), Great Britain (1936), and proposed in Switzerland (1936). Many democratic countries, however, are still lagging behind.

A different problem arose when it became obvious that fascist demonstrations, processions, and meetings were held in districts where they could be considered only as a deliberate provocation because of the hostility of the bulk of the people living in these quarters. If, in such cases, disturbances occurred, they were actually created by the opponents. Exploiting this situation was one of the favorite methods of rising fascist movements whereby they could stand on the constitutional right of free processions and assembly. It was only reasonable that new legislation should, in various states, as in Great Britain (1936), and as proposed in Switzerland (1936), subject freedom of assembly to severe restrictions by the police or, as the case might be, by the political authority, in order to avoid provocation and subsequent clash between political opponents.

(9) Perhaps the thorniest problem of democratic states still upholding fundamental rights is that of curbing the freedom of public opinion, speech, and press in order to check the unlawful use thereof by revolutionary and subversive propaganda, when attack presents itself in the guise of lawful political criticism of existing institutions. Overt acts of incitement to armed sedition can easily be squashed, but the vast armory of fascist technique includes the more subtle weapons of vilifying, defaming, slandering, and last but not least, ridiculing, the democratic state itself, its political institutions and leading personalities. For a long time, in the Action Française, the finesse of noted authors like Daudet and Maurras developed political invective into both an art and a science. Democratic fundamentalism acquiesced, because freedom of public opinion evidently included also freedom of political abuse, and even malignant criticism was sheltered. Redress had to be sought by the person affected through the ordinary procedure of libel, thereby affording a welcome opportunity for advertising the political intentions of the offender. Democracies which have gone fascist

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have gravely sinned by their leniency, or by too legalistic concepts of the freedom of public opinion. Slowly, the remaining democracies are remedying the defect. In some instances, the criminal codes are reformed in order to cope with the misuse of the press and of free speech to foster subversive propaganda or recriminations which affect the dignity of the republican and democratic institutions. New statutes were enacted in Finland (1931) and in the Netherlands (1934). Some countries went so far as to enact laws forbidding the circulation of false rumors; illustrations are Czechoslovakia (1923), Finland (1934), Switzerland (1936), and the new French press law which at the time of writing is under consideration in the Senate. It was made an offense to disparage the existing political institutions, and to offend the dignity of the acting authorities and public organs, in Czechoslovakia (1923), Finland (1930 and 1934), Spain (1932), the Netherlands (1934); also proposed in Switzerland (1936). Especially the republican-democratic institutions and symbols were shielded against defamatory denunciation. All such restrictions on the use of free speech and free press were greeted by fascists with the outcry that the democratic state was violating the very essence of its principles of freedom. But the measures proved effective in curbing the public propaganda of subversive movements and in maintaining the prestige of democratic institutions.

Furthermore, vilifying campaigns against leading personalities of the existing régime had to be checked. In several states, it was made unlawful to indulge in defamatory utterances concerning the president of the republic (Czechoslovakia, 1923) or to detract from the dignity of the republican-democratic symbols (Czechoslovakia [1923 and 1936], Lithuania [1936]). In France, after the shameless campaign against M. Salengro had resulted in the suicide of the victim, the new press law, under parliamentary consideration in 1937, protects leading figures in public life—not only of the existing régime—against slander and libel. Evidence of truth is admitted, but even if a statement is proved, its malignant character makes the author liable to damages. If Belgium had a more stringent political libel law, M. Degrelle could scarcely have boasted that at one time more than two hundred libel suits were pending against him. As happens frequently in anti-fascist legislation, the border-line between unlawful slander and justified criticism as lawful exercise of political rights is exceedingly dim,

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and the courts of democratic states are called upon to decide on legal grounds what in fact is a political problem for which a new *ratio decidendi* is yet to be discovered.

(10) More patently subversive is fascism's habit of publicly exalting political criminals and offenders against the existing laws —a practice which serves the twofold purpose of building up the revolutionary symbolism of martyrs and heroes and of defying, with impunity, the existing order. It is still remembered that Herr Hitler, in August, 1933, when the rowdies of his party murdered, under particularly revolting circumstances, a political adversary in Potempa and were sentenced to death by the court, proclaimed his "spiritual unity" with them. Only Czechoslovakia (1923) and Finland (1934) have provided against this practice of morally aiding and abetting the political criminal.

(11) Experience offers ample proof that even a well prepared armed rebellion of extremists from right or left is hopeless if the regular forces of the police and the army remain loyal to the legally constituted government. Therefore, one of the most important tasks of any self-respecting state is that of protecting its armed forces against infiltration by subversive propaganda. In many countries, political activity is altogether prohibited to members of the armed forces. The officers are usually less accessible to communist influence than the rank and file, while they are more inclined to sympathize with fascism because of its attendant nationalism. Thus, fascism is, on the whole, not unfavorably received by the officers of the armed forces. Although most countries possess criminal and military codes designed to curb incitement to disaffection among the armed forces, or have introduced new legislation of this kind (e.g., Czechoslovakia [1923], Belgium [1934], Great Britain [1934], Holland after the revolt on the *De Zeven Provincien* [1933–34]), such enactments aim manifestly at communism alone, and very little has been done to restrain penetration of the military system by fascist indoctrination.

(12) The best preventive statutes are ineffective if the public officials in general, who, by controlling the key-positions in the administration and by guiding the execution of the laws, are responsible for law enforcement, are not thoroughly loyal to the state from which they draw their livelihood. Whether public officials should be allowed the same freedom of political association and activity as other citizens (as provided for in Article 130 of

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the constitution of the deceased Weimar Republic), is a debatable problem. To permit public officials, however, to endorse anti-democratic parties, or actively to support them, would be an undue demand on the generosity of democratic fundamentalism. In a number of states, precautions have been taken against the participation of public officials and employees in any political party, as in Denmark (1932) and Finland (1926 and 1934), or in particular parties considered inconsistent with the democratic and constitutional structure of the state (Switzerland, federal statute [1932] and proposal of 1936, canton of Basle [1936], Lithuania [1934], Holland [1934]). The most drastic provisions designed to curb anti-constitutional activities of public officials of all kinds—including university and school teachers and persons drawing pensions from the state—are again found in Czechoslovakia (1933), where even the compulsory transfer of a judge to another service-position, if not dismissal, is permissible if he is convicted of participating in anti-democratic activities. From this viewpoint, the much debated American statutes prescribing the teacher's oath may win some favor among those who are duly alarmed by their possible anti-democratic implications.

(13) Finally, a specially selected and trained political police for the discovery, repression, supervision, and control of anti-democratic and anti-constitutional activities and movements should be established in any democratic state at war against fascism. By setting up special departments of the police, the Scandinavian countries and Switzerland, possibly also other states, herein followed the example of the dictatorial and authoritarian states. Moreover, in several states, collaboration of all citizens with the authorities in maintaining public order and safety is enjoined by making it an offense not to report to the competent authorities information concerning unlawful or subversive activities.

(14) In recent years of tension between the different doctrines, wide experience has been accumulated to the effect that fascist propaganda is pouring into democratic states from foreign countries with the deliberate purpose of undermining existing constitutional systems. International comity never was more flagrantly violated than by the missionary efforts of the fascist International in carrying political propaganda into other nations. Parrying of subversive activities directed against the state from outside is one of the fundamental, and at the same time most subtle, functions

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of the democratic states. It demands both delicacy and determination in order to avoid political and economic retaliation. Apparently, nothing can be done against radio propaganda from foreign transmitters which, in dictatorial countries, are of course agencies of the government. More available to the jurisdiction of the state under fire are police and administrative regulations prohibiting the political activities of foreigners or alien emissaries on the national territory (e.g., as speakers at meetings), the importation or circulation of foreign newspapers of anti-democratic character, the wearing of fascist symbols by foreign visitors or residents, and the prohibition of foreign party organizations within the borders. Neglect of such precautions led to the assassination of the National Socialist Swiss *Landesführer* in Davos in 1936. Appropriate provisions have been enacted in Switzerland, Czechoslovakia, Lithuania, in South West Africa (against Nazi propaganda), and in Cyprus and Malta (against Italian fascism). Switzerland, in 1935, after the kidnapping of the journalist Jacob by agents of the German *Gestapo*, passed a federal statute by which foreign officials are forbidden to arrogate to themselves, on Swiss territory, activities which are reserved to the national or cantonal authorities. In some instances, anti-espionage laws were passed (Czechoslovakia, 1923 and 1936, and Switzerland, 1935). In this connection, mention should be made of the financial support which, to all appearances, flows freely from the headquarters of the fascist International to fascist movements in democratic countries. Even if an effective control of anti-constitutional movements should be found possible, it seems beyond the power of the state to cut off the secret sources of financial contributions through the mediation of private individuals. In continental Europe, public accounting of political parties is completely unknown.

IV

Conclusion. As shown by this survey, democracy in self-defense against extremism has by no means remained inactive. At last, the terrifying spell of fascism's basilisk glance has been broken; European democracy has overstepped democratic fundamentalism and risen to militancy. The fascist technique has been discerned and is being met by effective counteraction. Fire is fought with fire. Much has been done; still more remains to be done. Not even the maximum of defense measures in democracies is equal to the mini-

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mum of self-protection which the most lenient authoritarian state deems indispensable. Furthermore, democracy should be on its guard against too much optimism. To over-estimate the ultimate efficiency of legislative provisions against fascist emotional technique would be a dangerous self-deception. The statute-book is only a subsidiary expedient of the militant will for self-preservation. The most perfectly drafted and devised statutes are not worth the paper on which they are written unless supported by indomitable will to survive. Whether successful defense is ultimately possible depends on too many factors to be discussed here. National traditions, economic considerations, the social stratification, the sociological pattern, and the specific juridical technique of each individual country, as well as the trend of world politics, come into play. In order definitely to overcome the danger of Europe's going wholly fascist, it would be necessary to remove the causes, that is, to change the mental structure of this age of the masses and of rationalized emotion. No human effort can force such a course upon history. Emotional government in one form or another must have its way until mastered by new psycho-technical methods which regularize the fluctuations between rationalism and mysticism.

Perhaps the time has come when it is no longer wise to close one's eyes to the fact that liberal democracy, suitable, in the last analysis, only for the political aristocrats among the nations, is beginning to lose the day to the awakened masses. Salvation of the absolute values of democracy is not to be expected from abdication in favor of emotionalism, utilized for wanton or selfish purposes by self-appointed leaders, but by deliberate transformation of obsolete forms and rigid concepts into the new instrumentalities of "disciplined," or even—let us not shy from the word—"authoritarian," democracy. Whether this goal is reached by transubstantiation of the traditional parliamentary techniques, as in Belgium, Czechoslovakia, and, last but not least, Great Britain, or by the straightforward devices of constitutional reform, as in the Irish Free State or in Estonia, is perhaps of secondary importance when compared with the immediate end, namely, that those who control the emotionalism of the masses should be made, by constitutional processes, ultimately and irrevocably responsible to the people.

In this sense, democracy has to be redefined. It should be—at

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least for the transitional stage until a better social adjustment to the conditions of the technological age has been accomplished—the application of disciplined authority, by liberal-minded men, for the ultimate ends of liberal government: human dignity and freedom.

In the meantime, since a majority of the people in all democracies under observation is still averse to the fascist mentality, the least that ought to be expected is that the governments in charge of the constitutional processes should be willing to meet and defeat the fascist technique on its own battle-ground. The first step toward the much-needed democratic International is awareness of the common danger, coupled with recognition of what has been done in the way of defense by other nations in similar predicaments. To neglect the experience of democracies deceased would be tantamount to surrender for democracies living.

Obviously, no country whatever is immunized from fascism as a world movement. Once this incontrovertible fact is recognized, the question suggests itself as to whether legislative measures against incipient fascism are perhaps required in the United States. To investigate possibilities in this direction would be beyond the limits of the present study. If, however, the question be answered in the affirmative, a second problem becomes that of devising federal or state anti-extremist legislation in conformity with the elaborate fundamentalism of constitutional rights enshrined in the American constitution.

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STATE CONSTITUTIONAL LAW IN 1936–37

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The invalidation and consequent abandonment of the N.I.R.A. did not bring to an end the trends of which it was, in fact, merely a manifestation rather than a cause. Section 7a had its precursors in the Railway Labor Act of 1926,[1] the Norris Anti-Injunction Act of 1932,[2] and similar state laws,[3] and has been carried over in the National Labor Relations Act.[4] The price maintenance provisions of the codes were the result of years of effort on the part of the American Fair Trade League to legalize resale price maintenance contracts. Today, various state Fair Trade Acts[5] go much farther than the codes dared to go in establishing resale price maintenance even apart from privity of contract. Trade associations have continued their efforts to "rationalize" industry through the collection of statistics on capacity, production, sales, and prices, trusting that the courts will permit this to be done through a more liberal interpretation of the anti-trust laws. Pending further national legislation to be built upon the broader interpretation of the commerce power enunciated in the Labor Relations Act decisions,[6] business efforts to set minimum prices have been carried on under a mantle of state and local legislation. Various trades and professions, desiring to carry forward their efforts to standardize minimum working conditions and professional practices in their fields, have also sought the aid of the states and of their local governments. Consequently, much of the work of the state courts during the year 1936–37 concerned the validity of these undertakings. There was also the normal run of cases in the various fields of state constitutional law. As last year (see this REVIEW, Aug., 1936, pp. 692–712), the decisions will be discussed under the following headings: (1) separation and delegation of powers; (2) inter-governmental relations; (3) individual rights: procedural; (4) individual rights: substantive; and (5) fiscal powers.[7] However, the nature of the material has necessitated a complete rearrangement of the subject-matter within each heading.

[1] *U. S. Code*, title 45, ss. 151 ff. [2] *Ibid.*, title 29, ss. 101 ff.

[3] Brissenden, "Genesis and Import of the Collective Bargaining Provisions of the Recovery Act," in *Economic Essays in Honor of W. C. Mitchell* (1935), p. 29.

[4] *U. S. Code*, title 29, ss. 151 ff.

[5] "The Fair Trade Laws" (1936), 36 *Columbia Law Rev.* 293.

[6] National Labor Relations Board v. Jones and Laughlin Steel Corp., 57 S. Ct. 615 (April, 1937), and accompanying cases.

[7] I am indebted to Mrs. G. C. Bell, research assistant in political science, for a preliminary selection of cases for this article. They were chosen from those reported in the advance sheets from May, 1936, to May, 1937. Unless otherwise indicated, the decision was rendered by the court of last resort of the state concerned. In Okla-

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I. SEPARATION AND DELEGATION OF POWERS

Delegation of Legislative Power to Private Groups. Few individualists are so rugged as to refrain from utilizing government to their own advantage. Yet there is danger lest the forces thus set in motion get out of control. Hence the desire to make governmental activity directly dependent upon the wishes of those who supposedly constitute the governed class. The California Agricultural Prorate Act of 1933[8] is a typical example of the result. Before any action can be taken under it, a petition signed by not less than 50 producers of the commodity concerned, or by not less than two-thirds of the total number of producers, whichever figure is the smaller, must be filed with the Prorate Commission. Following a hearing and certain findings of fact, the commission is then authorized to issue one primary and several secondary certificates to each producer, the former indicating the amount of the commodity which he is entitled to harvest or otherwise prepare for market, the latter being used to control the time and volume of such harvesting or preparation. The program must be terminated at the close of the marketing season if there is "filed with the commission an application for the termination signed by not less than 40 per cent of the producers or of the production (*sic*) of the prorated commodity."

The act was passed at the request of the citrus industry, and its application to the marketing of lemons is typical of the rôle it was intended to play. Practically all of the lemons sold in the United States are grown in California. Whereas the market normally absorbs about 16,500 carloads, the total production may run to nearly double that figure. Starting in 1925, the members of the California Fruit Growers Association, controlling approximately 90 per cent of the total acreage, voluntarily entered into a prorate agreement whereby the surplus was diverted to by-products at less than the cost of production, the processing and sale of the balance being so timed as to guard against periodic gluts and famines in the market. This private plan resulted in the producers of the remaining 10 per cent of the crop gaining nearly 20 per cent of the total sales. Under the Prorate Act, members of the Fruit Growers Association can secure their 90 per cent of the market while retaining power to cancel the entire program at any time they see fit to do so.

Similar provisions are contained in some of the milk control acts. Thus the Virginia statute[9] provides: "The commission shall withdraw the

homa and Texas, decisions of the court of criminal appeals, although a specialized court of last resort, also are indicated.

[8] *Laws of California*, 1933, p. 1969, sustained in Agricultural Prorate Commission v. Superior Court, 55 P. (2d) 495 (Feb., 1936).

[9] *Laws of Virginia*, 1934, c. 357, sustained in Reynolds v. Milk Commission, 179 S. E. 507 (1935), discussed in this REVIEW, Vol. 30, p. 707.

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exercise of its powers from any market upon written application of a majority of the producers (measured by volume) of milk produced and a majority of the distributors (measured by volume of milk distributed) in said market acting jointly." When Alabama[10] authorized its larger cities to regulate the minimum prices to be charged by those engaged in certain "service trades," including barbers and cleaners, it made the exercise of this power hinge upon the filing of a petition signed by "the owners, operators, or managers of not less than 60 per cent of the business establishments in any such service trade in any such city" requesting such legislation. California[11] required the signatures of not less than 80 per cent. In none of the cases arising under these statutes have the courts paid the least attention to the issue of delegation raised by these provisions. Only a lower California court[12] so much as mentioned this provision, and then only to remark: "It seems obvious that the mere request, even the unanimous request, of those persons engaged in a certain calling for special legislation applicable to that calling cannot in itself change the constitutional character of that legislation." On the other hand, the Maryland court[13] seized upon a much milder requirement in the milk control act of that state, forbidding the commission to act until requested to do so "by a substantial proportion of the producers and/or consumers and/or distributors in any marketing area," as an excuse for invalidating the entire statute. This would seem to leave the future of such provisions decidedly unsettled.

Delegation of Legislative Power to the Electorate. The Alabama legislature sought to pass two statutes, the first repealing the prohibitory liquor law and the second levying a general sales tax, neither of which was to become effective until approved by the voters in the forthcoming election. Dividing four to three, the majority of the court advised the legislature that the proposed referendum on the liquor act was constitutional.[14] They frankly conceded that "if the decision of the question is to depend upon the weight of judicial authority, it would be against the power to submit the question to the vote of the whole state;" but they preferred "the opinion of some of the most eminent jurists of this country," including

[10] *General Acts of Alabama*, 1935, p. 746. In Mobile v. Rouse, 173 So. 266 (March, 1937), discussed *infra*, this act was held to violate the state *due process* clause.

[11] *Laws of California*, 1935, p. 2212.

[12] People v. Osborne, 59 P. (2d) 1083, 1085 (App. Dept., Superior Ct. of Los Angeles, July, 1936), holding that the act violates the state *due process* clause. See *infra*, p. 676.

[13] Maryland Coöperative Milk Produeers, Inc. v. Miller, 182 A. 432, 434 (Jan., 1936).

[14] Opinions of the Justices, 166 So. 710 (March, 1936). Nevertheless the bill was dropped, as the judges also pointed out that the governor's call of the special session was not broad enough to include liquor legislation.

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Holmes, who have held otherwise. Adopting the reasoning of Cooley, they argued: "If it is not unconstitutional to delegate to a single locality the power to decide whether it will be governed by a particular charter, must it not quite as clearly be within the power of the legislature to refer to the people at large, from whom all power is derived, the decision upon any proposed statute affecting the whole state? And can that be called a delegation of power which consists only in the agent or trustee referring back to the principal the final decision . . . ?" The dissenting judges stated: "It is our opinion, in accord with the weight of authority . . . and . . . sound reasoning . . . , that the referendum embraced in this bill is a delegation by the legislature of the lawmaking power conferred upon that body by the people . . . , and that such delegation is . . . subversive of our representative form of government."

The minority elaborated this view at greater length in an opinion,[15] rendered the same day, advising that the second act likewise was unconstitutional. Pointing out that the constitution decrees that "the legislative power of this state shall be vested in a legislature," they concluded: "Here is the express constitutional provision for representative government, as distinguished from one of direct legislation by the people." Although conceding that "the power to delegate to counties and cities certain legislative powers relating to local governments is a part of the full legislative powers conferred on the legislature," they felt that statewide referenda would allow legislators "to evade the responsibility which belongs to their office," and would "soon bring to a close the whole system of representative government which has been so justly our pride." The four majority justices concurred in the conclusion that the proposed referendum was unconstitutional, but solely upon the ground that it was "nothing short of a delegation to individuals, that is, the voters of the state, of the right and duty of levying the tax in question," in violation of the express constitutional mandate that "the power to levy taxes shall not be delegated to individuals or private corporations or associations." In view of the fact that the act repealing the prohibitory liquor law levied heavy taxes upon the liquor traffic and hence, equally with this act, delegated the power to tax to the electorate, this attempted reconciliation is not convincing. Further litigation will be necessary to settle the Alabama rule.

Delegation of Legislative Power to the Administration. Although a lower Pennsylvania court had held[16] that the state milk control act unconstitutionally delegated legislative power to the administrative board, the supreme court, dividing three to two, reversed this ruling with the curt

[15] Opinions of the Justices, 166 So. 706 (March, 1936).
[16] Rohrer v. Milk Control Board, 184 A. 133 (March, 1936).

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statement:[17] "Courts which have accepted as constitutional the Public Service Company Law and the Anthracite and Bituminous Mine Codes, and the acts giving authority to the Department of Health to adopt rules and regulations, etc., . . . should not strain at the powers given the legislature's agent, the milk control board, under this act. A moment's consideration must convince an open mind of the impracticability of the General Assembly itself conducting the hearings and arriving at the conclusions necessary for fixing fair rates." The New Hampshire court[18] unanimously held certain portions of the state's milk control act unconsitutional as "an unrestricted delegation of legislative power," but left enough standing to constitute an effective price control device.

In passing a new plumbers' licensing act, New York provided that the local health commissioners "may require as a condition of renewal of any plumber's license issued after January 1, 1920, that the holder . . . qualify for such renewal by successfully passing an examination." When the New York City commissioner issued an order requiring all who had received their certificates of competency after January 1, 1930, to take an examination, this section of the statute was held unconstitutional because it failed to set any standard to guide the commissioner in exercising his discretion.[19] It should be an easy task to repair the act to meet this objection.

Judicial Power. The relative success of administrative adjudication of workmen's compensation litigation, coupled with the increased pressure of judicial business, has reduced judicial opposition to what might well be termed the delegation of judicial power to the administration. Nevertheless, an intermediate California appellate court held[20] that disputes arising under the Private Employment Agency Act of 1923 cannot be required to be submitted in the first instance to the commissioner of labor, even though this might be followed by a trial *de novo* in a regular court. The Idaho court held[21] that the tax commissioner cannot be authorized to determine the amount due under the sales tax from a defaulting taxpayer, this award, plus a penalty, becoming a lien on the property of the alleged defaulter. For reasons not clearly stated, this conclusion was reached in the name of due process rather than under the doctrine of the separation of powers.

At least 13 states have passed statutes essentially similar to, if not identical with, the Norris Anti-Injunction Act.[22] Although the Massa-

[17] Rohrer v. Milk Control Board, 186 A. 336, 345 (June, 1936).

[18] Opinions of the Justices, 190 A. 713 (March, 1937).

[19] Seignious v. Rice, 6 N. E. (2d) 91 (Dec., 1936).

[20] Collier v. Astor, 56 P. (2d) 602 (April, 1936).

[21] Johnson v. Diefendorf, 57 P. (2d) 1068 (May, 1936).

[22] See *supra*, note 2. The state statutes are collected in 63 P. (2d) 1104, 1106–7 (1936).

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chusetts[23] and New Hampshire[24] courts had rendered advisory opinions to the effect that such an act would be unconstitutional, the Indiana,[25] Louisiana,[26] and Wisconsin[27] acts were soon sustained. The Oregon court, in a pair of decisions,[28] has since sustained that state's act. The leading opinion, after pointing out that the question "whether such legislation is in the best interests of the commonwealth is a legislative and not a judicial" one, ventured the assertion that "whatever may be the best solution of the problem, we are convinced it is not through government by injunction," and that these statutes mark "the dawn of a new era in the domain of labor injunctions." The Washington court, on the other hand, dividing six to three, chose to protect the right of the courts to issue injunctions in labor disputes without satisfying the requirements of this statute.

This decision[29] is one of the most significant of the year. Reasoning from the premise that "what the legislature has not given, it cannot take away," the majority proceeded to prove that the right to issue injunctions is an inherent power of courts of equity. The requirements of a finding, prior to the issuance of an injunction, that the public officers charged with the duty of protecting the complainant's property are unable or unwilling to furnish adequate protection was considered especially arbitrary in that "it makes the power of the court dependent upon the inability or unwillingness of public officials to function." The dissenting judges' view that it merely required a finding, in keeping with the normal rules, that there is no adequate remedy apart from equity, was ignored. The majority also held that, when injunctions have been issued, the legislature cannot grant those accused of violating them a trial by jury, since this constitutes "a substantial abridgment of the inherent powers of the court" to punish for contempt in a summary proceeding. The apparently contrary ruling in Michaelson v. United States, 266 U. S. 42 (1924), was distinguished on the ground that Washington trial courts, unlike those

[23] Opinions of the Justices, 375 Mass. 580, 176 N. E. 649 (1931). The legislature, however, passed the statute.

[24] Opinions of the Justices, 86 N. H. 597, 166 A. 640 (1933).

[25] Scopes v. Helmor, 205 Ind. 596, 187 N. E. 662 (1933).

[26] Dehan v. Hotel and Restaurant Employees Local, 159 So. 637 (La. App., 1935).

[27] State Federation of Labor v. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56 (1934), followed in American Furniture Co. v. Int'l Brotherhood etc., 268 N. W. 250 (June, 1936). And see Fenske Bros. v. Upholsterers' Int'l Union, 358 Ill. 239, 193 N. E. 112 (1934), certiorari denied, 295 U. S. 734 (1935), and Levering and Garrignes Co. v. Morrin, 71 F (2d) 284 (C.C.A. 2, 1934), certiorari denied, 293 U.S. 595 (1934).

[28] Wallace Co. v. Int'l Assoc. of Mechanics, 63 P. (2d) 1090, and Starr v. Laundry and Cleaners Local, 63 P. (2d) 1104, both decided December 29, 1936.

[29] Blanchard v. Golden Age Brewing Co., 63 P. (2d) 397 (Dec., 1936).

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in the federal system, are created by the constitution rather than by statute.

In Commonwealth v. Harrington,[30] the Kentucky court held that the legislature may authorize the judges of the court of last resort to regulate, by court order, the practice of law and the grounds and procedure for disbarment. The opinion intimated that the court would have this power even in the absence of statute. The Minnesota court[31] went a step further, ruling that "a court which is authorized to admit attorneys has inherent jurisdiction to suspend or disbar them. This inherent power . . . cannot be defeated by the legislative or executive department. The removal or disbarment of an attorney is a judicial act." It held that a statute prohibiting disbarment proceedings "unless commenced within the period of two years from the date of the commission of the offense or misconduct complained of" was "an attempted projection of legislative power into the judicial department." Earlier decisions following the procedure established by statute were explained on the basis of comity. In an opinion[32] written on behalf of the Missouri court, Judge Frank took the final step, insisting that "comity between the separate departments would be best promoted by strict adherence to the constitution." He concluded that "the power to define and regulate the practice of law is . . . judicial and not legislative," even though it relates to practice before the Public Service Commission rather than the courts; and held that a corporation, since it cannot appear in person, must act in legal matters through licensed attorneys. Hence, various officers of the Missouri Pacific Railroad who had appeared before the Public Service Commission on behalf of the corporation, not being attorneys, were found guilty of contempt. The other judges concurred in the result, but solely on the ground that under existing statutes the defendants were not qualified to appear before the commission. However, the opinions were written and published in such a way as to give the impression that Judge Frank's opinion is the opinion of the court.

II. INTERGOVERNMENTAL RELATIONS

The Nation and the States. When the Nebraska legislature levied a tax, the collection and disposition of which were to hinge upon the ultimate passage of the national Social Security Act, the state court held[33] the statute unconstitutional as "a delegation of legislative power to the Congress of the United States." Stating that "the legislature cannot

[30] 98 S.W. (2d) 53 (Nov., 1936).

[31] *In re* Tracy, 266 N.W. 88 (March, 1936).

[32] Clark v. Austin, 101 S.W. (2d) 977 (Feb., 1937).

[33] Smithberger v. Banning, 262 N.W. 492 (1935), discussed in this REVIEW, Vol. 30, p. 695.

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delegate the sovereign powers of the state to . . . a foreign jurisdiction," it intimated that neither the going into force nor the termination of a state law can be made dependent upon future national action. Dividing five to four, the Washington court[34] reached a similar conclusion, but on different grounds. The state unemployment insurance act, passed in March, 1935, contained the provision: "This act is to become operative . . . from and after the enactment date of the Wagner-Doughton bill which is now before the Congress of the United States." This bill never passed, its place being taken by the Social Security Act. Consequently, the court ruled that, judged by its own terms, the state law never became effective. Although the opinion conceded that "for the purposes of this case, we assume without deciding that a state legislature may provide that a statutory enactment shall become operative upon the enactment date of a federal statute not yet passed by the Congress," it added: "A state legislature in particular must be held to the exercise of its important functions upon knowledge of existing facts and not upon expectations." The dissenting judges, pointing out that "every essential feature of the Wagner-Doughton bill is carried into the Social Security Act," accused the majority of having "charged the legislature with making a fetish of a name" in order "to thwart the most important piece of social legislation that has ever been enacted by the Congress . . . and the state legislatures."

The California Unemployment Reserves Act provides that it "shall take effect only if and when there is enacted legislation by the United States government providing for a tax upon the payment of wages by employers in this state, against which all or any part of the contributions required by this act may be credited," and that it shall cease to be operative whenever the national law is repealed or amended in such manner that the contributions required by the state act or some portion thereof cannot be thus credited. The California court[35] unanimously sustained the act. Instead of using these qualifying provisions as the basis of arguments against its validity, the court referred to them in countering the argument of counsel that the state had been illegally coerced by Congress. "It is difficult to perceive," they wrote, "how the alleged federal coercion could apply to a state act passed before the federal law was enacted. Rather it would seem that the state legislature . . . enacted the state law with the hope and expectation of the enactment of a federal law as outlined in the bill then pending in Congress."

Statutes passed after the enactment of the federal law upon which they are made to hinge uniformly have had better success. In sustaining an act providing that it "shall become ineffective with the expiration of

[34] Johnson v. State, 60 P (2d) 681 (Sept., 1936).
[35] Gillum v. Johnson, 62 P. (2d) 1037 (Nov., 1936).

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the National Industrial Recovery Act and amendments thereto," the Kansas court ruled[36] that the "effect of a statute may be quite contingent, according to existing law of another state, according to future law of another state, and according to change in the law of another state," and that the same rules apply where national laws are involved. This seems the logical position to take, since the effect of declaring such a proviso unconstitutional normally would be to leave the state law in force even after the lapse of the national act. It would be difficult, in most cases, to reach the conclusion that the substantive provisions of the act and this proviso are so interwoven that both must fall together. Consequently, those opposed to the current trend of legislation will do well not to attack such provisos.

Even where a state act is passed following the enactment of the federal law, it may be made contingent upon future federal administrative action. Thus Massachusetts, following passage of the Social Security Act, provided that its state unemployment insurance act "shall become operative upon [its] approval . . . by the federal Social Security Board." It also provided that if, after such approval, the national act becomes "inoperative because of unconstitutionality or otherwise, the operation of this act shall thereupon cease." The former clause was held[37] to be no more fatal than the latter, the court stating unanimously that "the success of the plan may depend largely upon coöperation between the several states and the federal government. This provision is in harmony with the general design," and does no more violence to the doctrine that legislative power cannot be delegated than do local option acts.

The bearing of federalism upon the constitutional rights of persons accused of crime will be considered in section three.

The State and Its Local Governments. Few of the decisions in this category merit special notice. A California district court of appeal held[38] that regulating the procedure to be followed in passing city ordinances is a "municipal affair." Hence, under the California rule, ordinances regulating such procedure prevail over the general laws of the state. New Mexico, in keeping with the general trend, held[39] that the governor cannot pardon one who is convicted of violating a city ordinance, since this

[36] Pittsburgh v. Robb, 53 P. (2d) 203 (Jan., 1936), which concerned a P.W.A. grant to the city. The court refused to write "a treatise on the subject," venturing the opinion that "unctuous repetition or sonorous rephrasing of the dogma" that the legislature may not delegate its power of lawmaking "leads us nowhere."

[37] Howes Bros. Co. v. Unemployment Compensation Con'n., 5 N.E. (2d) 720 (Dec., 1936). Although the original state act was approved August 12, 1935, two days prior to the passage of the Social Security Act, this 1936 amendment may be considered as a qualified reënactment of it.

[38] Potter v. City of Compton, 59 P. (2d) 537 (July, 1936).

[39] City of Clovis v. Hamilton, 62 P. (2d) 1151 (Nov., 1936).

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does not constitute "an offense against the state." The opinion failed to disclose who, if anyone, can grant such pardons.

III. INDIVIDUAL RIGHTS: PROCEDURAL

Although civil procedure gives rise to few questions of a constitutional nature, the rights of persons accused of crime are a constant source of litigation and an ever-flowing spring of new doctrines. These guarantees will be considered in the order in which they must be asserted in court.

Search and Seizure. The earlier South Dakota cases, like those in all common law jurisdictions, uniformly had accepted evidence however obtained. But in State v. Gooder,[40] decided in 1930, calling attention to "the moral obliquity and vicious tendencies inherent in holding evidence procured by state officers by means of unlawful searches and seizures admissible in prosecutions in the state courts," a closely divided court abandoned the common law doctrine for the rule first championed by the federal Supreme Court and since adopted by a majority of the state courts.[41] Some trial judges, however, continued to follow the earlier precedents. In State v. McClendon,[42] the majority made it clear that it has no intention of returning to them, and held that evidence secured through a search of a private room in a rooming house without a warrant, and not sufficiently contemporaneous to be justified by the arrest, cannot be used.

In an effort to cover the steps by which it reached the present rule, the federal Supreme Court developed the salutary qualification that a motion to suppress the evidence must be made prior to trial unless the defendant is first apprised of the illegal search by facts coming to light in the course of the proceedings. Not all courts following the federal rule accept this qualification. In Mason v. State,[43] the motion to suppress was not made until the close of the evidence. The Oklahoma court held that this was soon enough. This court frequently sustains motions first made as the trial is about to open,[44] which would lead one to believe that this procedure has become a common practice in that state. It has been sustained also in Texas.[45]

The Washington court has accepted both the federal rule and the federal qualification of that rule. However, it has narrowed this qualification by the new one:[46] "Where, by the direct or proper cross-examination of the state's witnesses, it is made to appear, or it is otherwise admitted, that

[40] 57 S.D. 619, 234 N.W. 610.
[41] See this REVIEW, Vol. 30, p. 702.
[42] 266 N.W. 672 (April, 1936).
[43] 64 P. (2d) 1238 (Okla. Cr., Feb., 1937).
[44] See Borchers v. State, 56 P. (2d) 922 (April, 1936); Bryson v. State, 56 P. (2d) 1198 (April, 1936); Reininger v. State, 60 P. (2d) 629 (Aug., 1936).
[45] Greenway v. State, 101 S.W. (2d) 569 (Tex. Cr., Feb., 1937).
[46] State v. Gunkel, 63 P. (2d) 376 (Dec., 1936).

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the articles which are offered in evidence have been unlawfully seized, it is the duty of the trial court, upon objection, to refuse to receive them in evidence. There being no question of fact under such circumstances, and nothing to require the court to stop in the midst of the trial to try a collateral fact, the court has only to rule on the admissibility of evidence upon admitted or conceded facts." It held, however, that, measured by this standard, the illegality of the search in the case before it was not certain. The opinion gives an excellent summary of the Washington law.

By far the greater portion of all search and seizure cases have involved intoxicants. This continues to be true. Texas law enforcement agents have been particularly embarrassed by the ruling[47] that *every* search for liquor pursuant to the terms of a search warrant is illegal, the legislature inadvertently or otherwise having repealed the law authorizing the issuance of such warrants. Even the admission of counsel that facts existed justifying the search without a warrant has been held not to validate the use of the evidence when the record failed to disclose these facts.[48]

Search and Seizure: Federalism. McLemore was indicted for the unlawful possession of a distillery. The evidence against him was obtained by agents of the federal government, who raided his plant without a search warrant or other color of right. His motion to suppress was refused[49] on the basis of the well known doctrine that the state bill of rights forbids only the use by the state of evidence illegally secured by state officers. There is nothing new in this ruling, it being merely one more illustration of the fact that many provisions of our bills of rights are easily evaded by resorting to the doctrine that the nation and the states are "distinct" sovereignties. The appellant also failed to show that his rights had been invaded, as he apparently had no right on the property in question.

Successive Prosecutions. It was once regarded as "an established principle that out of the same state of facts a series of prosecutions against a prisoner is not to be allowed."[50] Current acceptance of the rule that an act which contravenes the law of different political units is cognizable in the courts of each as a distinct offense[51] has weakened its importance. The death blow has been delivered by the practice of finding a number of distinct crimes against a single government.[52] Thus the Wisconsin court unanimously ruled[53] that "a prosecution for larceny of an automo-

[47] Greenway v. State, 101 S.W. (2d) 569 (Tex. Cr., Feb., 1937).
[48] Rone v. State, 101 S.W. (2d) 1017 (Tex. Cr., Feb., 1937).
[49] McLemore v. State, 172 So. 139 (Miss. Feb., 1937).
[50] Broom, *Legal Maxims* (9th ed., 1924), p. 231.
[51] See my "The Lanza Rule of Successive Prosecutions" (1932), 32 *Columbia Law Rev.* 1309, and "Penal Ordinances and the Guarantee Against Double Jeopardy" (1937), 25 *Georgetown Law Jour.* 293. And see this REVIEW, Vol. 30, p. 700.
[52] See "Multiple Punishment Under the Double Jeopardy Rule" (1931), 31 *Columbia Law Rev.* 291. [53] Schroeder v. State, 267 N.W. 899, 903 (June, 1936).

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bile is not a bar to a subsequent prosecution, based on the same act or transaction, for taking, using, and operating the same automobile on a public highway without the owner's consent, . . . such offense not being a lesser degree of larceny but a distinct statutory offense . . . . There are distinct elements constituting the crime defined in one, which are not included in the definition of the other." The California court held[54] that manslaughter and reckless driving are distinct crimes, even when the first is proved by establishing the second. Refusing to "enter into an extended discussion in an attempt to compose seemingly conflicting views expressed in the decisions," the opinion stressed the fact that "under the manslaughter charge, he could not have been acquitted of manslaughter and convicted of reckless driving . . . . They are not the *same* offenses nor is one . . . *necessarily* included within the other."

Hope seemingly springs eternal in the breast of defense counsel. Adams was indicted for felonious assault. After the jury was accepted and sworn and the prosecuting attorney had stated the case, the defendant demurred to the indictment. The demurrer was sustained, and a new indictment was immediately secured. Upon rearraignment, he pleaded former jeopardy. The plea was rejected, the Kentucky court ruling[55] that one cannot be in jeopardy "unless the indictment or information be sufficient to sustain a conviction." It might have been refused upon the rule that a prosecution discontinued at the request or with the consent of the defendant cannot be the basis of a plea in bar. In a federal court, only this second ground would be available, the first having been rejected[56] as unsound.

Jury Trial. The Nevada court once intimated[57] that a jury cannot be waived in a felony case. In State v. Mendez,[58] this *dictum* was elevated to a ruling, but the opinion stated: "We need not determine whether our state constitution prohibits the waiver . . . because such waiver is clearly inhibited by statute." The North Dakota court held[59] that when one juror becomes ill, the remaining eleven, if the court, the prosecutor, and the defendant consent, may complete the trial. The ruling was placed upon the reasoning used in the principal opinion in Patton v. United States,[60] which held that a jury, *and hence one juror,* may be waived. The opinion avoided mentioning the North Dakota statute, which is virtually identical with the one which the Nevada court held prohibits such a

[54] People v. Herbert, 58 P. (2d) 909 (June, 1936).
[55] Adams v. Commonwealth, 92 S.W. (2d) 7 (March, 1936).
[56] United States v. Ball, 163 U.S. 662 (1898).
[57] State v. Borowsky, 11 Nev. 119 (1876), discussed in my "Waiver of Jury Trial in Felony Cases," 20 *Calif. Law Rev.* 132, 142.
[58] 61 P. (2d) 300 (Oct., 1936).
[59] *Ex parte* Kortgaard, 267 N.W. 438 (June, 1936).
[60] 281 U.S. 276 (1930), discussed in 20 *Calif. Law Rev.* 152.

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waiver.[61] A similar ruling was rendered by the Michigan court,[62] whose statutes, however, present no problem in this regard. This reasoning reached its logical fruition in the Illinois case of People v. Scudieri,[63] which held that the trial may open with less than twelve jurors. In this case, only eleven eligible jurors were available on the panel, and all concerned agreed to proceed with the eleven rather than call in talesmen.

A New Jersey statute of 1935 provides that when a trial seems likely to be protracted, fourteen jurors instead of twelve may be impaneled. It differs from the normal "extra juror" statute in that the additional members are not designated as alternates. If more than twelve survive at the close of the trial, twelve are drawn by lot to decide the case. The act was sustained[64] as making merely a "formal change but no substantial modification" of the jury system. "In adopting the course it did," the opinion stated, "it may well have been with the thought that fourteen potential jurors, each of whom stood an equal chance of functioning as a juror, would give closer attention to the evidence and to the arguments than would alternate jurors who stood to act only in the remote contingency of disqualification in the twelve first chosen." Without expressing an opinion on this portion of the act, six of the fifteen judges dissented upon the ground that "the broad power given to the court to discharge jurors from the box during the course of the trial is a substantial violation of the jury principle."

Self-Incrimination. While the defendant was under arrest charged with rape, a doctor, accompanied by two or three policemen, went to the jail and made an examination of him to ascertain whether he had gonorrhea. The fact that he did was used in evidence against him, as the prosecuting witness was found to be suffering from a newly acquired case of the same disease. On appeal from a conviction, the Kentucky court ruled[65] that "if he willingly submitted to the examination and offered no protest or objection thereto, the evidence obtained thereby was competent, but otherwise it was incompetent .... The question whether the examination of appellant's person was made with or without his consent should have been submitted to the jury." Similar rulings have been made at various times in Arkansas, California, Iowa, and Missouri.[66] The federal courts, on the other hand, no doubt would accept such evidence,[67] as a majority of the state courts would do, under the doctrine that the immunity from com-

[61] See 20 *Calif. Law Rev.* 136.

[62] Attorney-General v. Montgomery, 267 N.W. 550 (June, 1936). See 20 *Calif. Law Rev.* 136.

[63] 1 N.E. (2d) 225 (April, 1936).

[64] State v. Dolbow, 189 A. 915 (Feb., 1937).

[65] McManus v. Commonwealth, 94 S.W. (2d) 609 (May, 1936).

[66] See my "Self-Incrimination in the Modern American Law" (1931), 5 *Temple Law Quar.* 368, 381.

[67] *Ibid.*, p. 378.

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pulsory self-incrimination has no application to the discovery of physical facts or "real" evidence.[68]

To make it possible to enforce its parking restrictions, Detroit provided that when a motor vehicle is involved in a traffic violation, the owner is presumed guilty of the violation unless he takes the stand as a witness or affirmatively shows that the violation was not committed by him. The Michigan court unanimously held[70] that the ordinance deprives such owner of a constitutional right in that it "compels him to be a witness in proceedings wherein he is being prosecuted." It also held that the presumption, being an unreasonable one, violates due process.

IV. INDIVIDUAL RIGHTS: SUBSTANTIVE

Prohibition of the Sale of Wholesome Articles. In 1888, the federal Supreme Court held[71] that a state may forbid the sale of oleomargarine and other butter substitutes, and in 1904 it stated[72] that it was still of the same opinion. In 1919, it held[73] that a state may prohibit the sale of condensed skim milk, even though the butter fat has been replaced by vegetable fats. The Wisconsin court, in keeping with these opinions, had sustained[74] an anti-filled-milk act; but in 1927,[75] in ruling that it violates the state constitution to prohibit the sale of oleomargarine, it rejected the reasoning of its 1922 opinion and, in effect, overruled it. This reversal proved prophetic of the recent trend. The Illinois court[76] had invalidated an anti-filled-milk act of 1923 because it permitted the sale of oleomargarine, thus violating the guarantee of equality before the law. The 1935 legislature having amended the act to include oleomargarine, the court[77] invalidated the entire statute. Filled-milk acts likewise were invalidated in Michigan[78] and Nebraska,[79] the former court pointing out that due process "guarantees to citizens the general right to engage in any business which does not harm the public . . . . [Since] any possibility of fraud, sufficient in extent to be called public, in the sale of a harmless and nutritive food products may be avoided by regulations as to branding, disclosure of ingredients, kinds and marking of containers, requirement that eating places give notice to customers of its use, . . . the remedy necessary to

[68] *Ibid.*, p. 386.
[70] (No footnote 69) People v. Hoogy, 269 N.W. 605 (Nov., 1936).
[71] Powell v. Pennsylvania, 127 U.S. 678. One judge dissented.
[72] McCray v. United States, 195 U.S. 27, 62.
[73] Hebe Co. v. Shaw, 248 U.S. 297. Three judges dissented.
[74] State v. Emery, 178 Wis. 147, 189 N.W. 564 (1922).
[75] Jelke Co. v. Emery, 193 Wis. 311, 214 N.W. 369.
[76] People v. Carolene Products Co., 345 Ill. 166, 177 N.E. 698 (1931).
[77] Carolene Products Co. v. McLaughlin, 5 N.E. (2d) 447 (Dec., 1936).
[78] Carolene Products Co. v. Thompson, 267 N.W. 608 (June, 1936).
[79] Carolene Products Co. v. Banning, 268 N.W. 313 (July, 1936).

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avoid infringement upon constitutional rights is by way of regulation, not prohibition."

All three opinions made valiant efforts to distinguish Hebe Co. v. Shaw, pointing out that it had sustained a statute prohibiting the sale of milk from which a valuable ingredient (butter fat) had been removed, whereas these recent acts prohibit the sale of milk or milk products to which vegetable fats have been added. It would be a simple task to redraft them to meet this objection, but it is doubtful if this would save them. As the Michigan court stated, acceptance of the ruling in the Hebe Co. case as a proper interpretation of the due process clause of the state constitution would "whittle away" the rights of the individual under that constitution. If the federal Supreme Court will not protect these rights in the name of the Fourteenth Amendment, these courts stand ready to do so in the name of the bills of rights of their respective states.

There is nothing peculiar in this situation, as state supreme courts, construing duplicate guarantees in their state constitutions, have fairly frequently demanded different standards and thus annulled statutes which the federal Supreme Court would have sustained.[80] The task of the latter court also has been lightened by the fact that the state courts have struck down many of the more arbitrary laws which otherwise would have come before it for decision. Doubtless the paucity of federal decisions on questions of labor legislation in the period 1886–1905 is to be explained largely on this ground;[81] and it would seem, judging from the cases discussed in the following pages, that we again are passing through a similar period.

Right to Engage in a Trade or Calling. There is no doubt today as to the power of government to regulate admission to such professions as medicine, pharmacy, optometry, or dentistry, and to require proof of adequate preparation and skill before such admission is granted. How much farther the legislature can go is still an open question in many states. The Maryland court held[82] that it cannot require the examination and licensing of paper-hangers, since this invades "the right to engage in those common occupations or callings which involve no threat to the public welfare . . . to which [one] is entitled as a matter of natural justice and common usage." It added, *obiter*, that it is doubtful "whether the police power of a state is broad enough to even permit it to require plumbers to secure licenses," and that the state's barber act, if not actually unconstitutional, at least marks "the farthest point reached by the tide of regulation of

[80] The classic example is still *In re* Morgan, 26 Colo. 415 (1899), invalidating a statute similar to the one sustained in Holden v. Hardy, 169 U.S. 366 (1898). And see this REVIEW, Vol. 29, pp. 616, 621.

[81] See Pound, "Liberty of Contract", 18 *Yale Law Jour.* 454 (1908).

[82] Dasch v. Jackson, 183 A. 534 (Feb., 1936).

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labor and industry." This was followed three months later with a ruling[83] that the 1935 barber act, whatever might be said of the earlier one, passed the line of reason in that "persons desiring to engage in that occupation are met with requirements entirely out of proportion with the character and purposes of this trade . . . . In order to obtain a license . . . , one must have had ten years of educational preparation. He must have been a graduate of the eighth grade and have completed a two-year course in a barber school or a barber shop . . . . These are manifestly unreasonable requirements to enter a simple occupation," and indicate "an apparent design, although indefensible and unreasonable, to give to this simple and useful trade the characteristics and standards of a highly technical profession." Hence it held that the act "contravenes the Fifth[84] and Fourteenth Amendments to the Constitution of the United States and the twenty-third article of the Declaration of Rights of the state of Maryland."

The 1935 Illinois plumber act requires much higher qualifications than ever before have been seriously considered. Although stating[85] that "it is one of the fundamentals of our democratic form of government that every citizen has the inalienable right to follow any legitimate trade, occupation, or business which he sees fit," the state court evaded passing upon its validity except in so far as it defines plumbing to include drain-laying, which, the court concluded, "is an independent trade." "No citizen," it held, "should be legislated out of his trade and have it awarded to another craft . . . . It could be of no material value to a craftsman who confines his labor to that of a drain-layer to be educated in plumbing in all its different ramifications." So far, no court seems to have applied this doctrine to the practice of law.

Price and Wage Regulation. When the Virginia court reversed its previous ruling and followed Nebbia v. New York[86] in holding that the milk industry is so affected with a public interest as to be subject to price regulation,[87] the last effective opposition to this new movement seems to have given way. The ruling of a lower Pennsylvania court,[88] holding the Pennsylvania act unconstitutional, was reversed by the state supreme court,[89] although by the narrow margin of three to two. The minority

[83] Schneider v. Duer, 184 A. 914 (May, 1936).

[84] In view of the fact that it is elementary that the first eight amendments apply only to the national government, the frequency with which they are used by state supreme courts as limitations upon state powers is truly shocking. Of course in the case of "due process" the error is purely technical, as the same result could be reached under the Fourteenth.

[85] Scully v. Hallihan, 6 N.E. (2d) 176 (Dec., 1936).

[86] 291 U. S. 502 (1934), discussed in this REVIEW, Vol. 29, p. 45.

[87] See this REVIEW, Vol. 30. p. 707.

[88] See *ibid.*, p. 708.

[89] Rohrer v. Milk Control Board, 186 A. 336 (June, 1936).

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could "think of no business that is more essentially private than that of producing and selling milk," and considered the act "an attempt to apply . . . a new social theory which is repugnant to our [state] constitution." The dissenting Alabama judge[90] insisted that the majority's decision "destroys the liberty of the citizen to contract with reference to his own property," and opens the door to similar control "over butter, bacon, bread, eggs, potatoes, and other necessary articles of food." The Florida,[91] Indiana,[92] and New Hampshire[93] opinions were unanimous, the Florida one stating that although "this court is not bound to follow the Supreme Court of the United States when construing the provisions of our state constitution," still "the decisions of that able and eminent tribunal on questions analogous to those presented to this court have always been considered as strongly persuasive and usually followed." The Indiana opinion, referring to early Indiana statutes, laughed at the blind spots in the "history" advanced by those who contend that such legislation is unprecedented, and warned against the consequences which may follow efforts to thwart normal development by judicial vetoes. The only court to invalidate a milk-control statute was that of Maryland, which placed its ruling upon the doctrine of the separation of powers.[94]

Efforts to set minimum prices for certain service trades have been less successful. In invalidating the state barber act of 1931, a closely divided Florida court[95] characterized it as "a species of socialistic leveling of merit or capacity in the practitioner wholly inconsistent with the American ideal of encouragement to the worthy and industrious, . . . who would be in a measure coerced by the minimum . . . to charge a price in reality inadequate to compensate him reasonably for the character of service he is capable of rendering." It dismissed the "emergency" plea with the curt rejoinder: "To hold that any of the provisions of the constitution may be suspended during a so-called emergency announces a doctrine leading directly to despotism." Only one judge dissented when the Alabama court[96] invalidated city ordinances setting minimum prices for barbering services and for cleaning and dyeing, the majority stating: "During the century of Alabama's political existence, no legislature has ever attempted to exercise the power in question—a persuasive argument that

[90] Franklin v. State, 169 So. 295 (June, 1936).

[91] Miami Home Milk Producers' Ass'n v. Milk Control Board, 169 So. 541 (July, 1936). [92] Albert v. Milk Control Board, 200 N.E. 688 (March, 1936).

[93] Opinion of the Justices, 190 A. 713 (March, 1936). [94] See *supra*, p. 661.

[95] State v. Ives, 167 So. 394 (March, 1936). The court divided 3 to 3 on this issue, but one judge concurred in the ruling on other grounds, making the vote 4 to 2 against the statute.

[96] City of Mobile v. Rouse, 173 So. 266 (March, 1937). In the intermediate court, a dissenting judge accused his colleagues of "mere rhetorical play upon ringing phrases." City of Mobile v. Gibson, 173 So. 264 (Ala. App., Feb., 1937).

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the power has never existed." A lower Delaware court[97] unanimously invalidated what was virtually an N.R.A. code for the cleaning and dyeing industry, stating that the act "savors of an attempt to establish the ancient guild . . . , operating not so much for the public benefit as for the advantage of its members."

A California municipality undertook to compromise with an ordinance forbidding the advertising of prices for barber services. The appellate department of the Los Angeles superior court held[98] that this violates freedom of expression as well as due process.

Production and Marketing Control. In sustaining the Agricultural Prorate Act, discussed in section one, the California court[99] rejected the contention that merely because it "absolutely prevents the marketing by every lemon grower in the state of any portion whatever of his lemon crop except as the program committee may determine to be advisable," it constitutes an unjustifiable interference with liberty of contract. Pointing out that the "benefit will be enjoyed ratably by all" and the "burden or detriment will rest equally upon all," it concluded that the act is an entirely reasonable effort to cure the unfair features of the voluntary program of previous seasons.

Closing Hours and Maximum Hours of Labor. The California court invalidated municipal ordinances undertaking to prevent the night or early morning delivery of bakery goods[100] or laundry.[101] Both ordinances were held to violate the state and federal due process and equal protection clauses. It also held[102] that the legislature cannot require barber shops to close evenings, Sundays, and holidays without imposing similar limitations upon business in general. The opinion stated: "While we are in accord with the belief that we have arrived at a stage in our economic life, due to the progress of industry and the development of machinery, when long hours of labor are no longer necessary and are not desirable, nevertheless we cannot escape the conclusion that a law which singles out a single profession or calling for regulation of such matters is special legislation, and repugnant to the federal and state constitutions."

The Ohio court[103] invalidated an ordinance setting closing hours for grocery stores. Distinguishing its earlier opinion[104] sustaining such legisla-

[97] Becker v. State, 185 A. 92 (Del. Super., May, 1936). And see Kent Stores v. Wilentz, 14 F. Supp. 1 (D.C., N.J., March, 1936).

[98] People v. Osborne, 59 P. (2d) 1083 (July, 1936).

[99] Agricultural Prorate Com'n v. Superior Court, 55 P. (2d) 495 (Feb., 1936).

[100] Skaggs v. City of Oakland, 57 P. (2d) 478 (April, 1936).

[101] *Ex parte* Mark, 58 P. (2d) 913 (June, 1936).

[102] *Ex parte* Scaranino, 60 P. (2d) 288 (Sept., 1936). A similar ruling had been rendered in *Ex parte* Boehme, 55 P. (2d) 559 (Cal. App., March, 1936).

[103] Olds v. Klotz, 3 N.E. (2d) 371 (July, 1936).

[104] Wilson v. City of Zanesville, 130 Ohio St. 286, 199 N.E. 187 (1935). Two judges dissented.

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tion as applied to barber shops, it stated that the latter is justifiable as a health measure, whereas "the limitation of hours that products of that kind [groceries] may be sold by retail to the public seems to be of minor consideration in relation to the public health in comparison with the necessity of having food available." Thus it appears that in California an hours law for barbers is unconstitutional unless coupled with a general law, whereas in Ohio this coupling would render it invalid. There is also an apparent conflict between the California bakery and laundry opinions and the barber case in so far as the former are based upon due process rather than equal protection.

Social Insurance. The state courts have seemed more than willing to shift to the federal Supreme Court the burden of deciding upon the validity of social insurance. The California[105] and Massachusetts[106] courts sustained their state unemployment insurance acts unanimously, and the New York court[107] rendered a similar verdict by a five to two vote. The only court to invalidate such a statute evaded the basic issues at stake,[108] leaving open the question of the validity of a new statute. It would seem reasonably safe to predict that the federal Supreme Court's favorable rulings of May 24,[108a] although five to four, have settled the validity of unemployment insurance and with it of social insurance in general.

Miscellaneous Due Process and Equal Protection Cases. The Michigan court held[109] that even a *prima facie* presumption that the owner of an automobile was driving when a traffic violation was committed is so unreasonable as to be unconstitutional. The Georgia court was of opinion[110] that it is valid to require stock insurance companies to compensate their agents by commissions only, while permitting mutual companies to pay their agents on a salary basis. In one of the most curious decisions of the year, the Alabama court held[111] that "the owner has the right to come and

[105] Gillum v. Johnson, 62 P. (2d) 1037 (Nov., 1936).

[106] Howes Bros. Co. v. Unemployment Compensation Com'n., 5 N.E. (2d) 720 (Dec., 1936). Certiorari denied, 57 S. Ct. 434 (Feb., 1937). Both this and the preceding case were discussed *supra*, p. 666.

[107] Chamberlin v. Andrews, 2 N.E. (2d) 22 (April, 1936), affirmed by an equally divided court, 57 S. Ct. 122 (Nov., 1936).

[108] Johnson v. State, 60 P. (2d) 681 (Wash., Nov., 1936). See the discussion of this case *supra*, p. 666.

[108a] Carmichael v. Southern Coal and Coke Co., 57 S. Ct. 868; Stewart Mach. Co. v. Davis, 57 S. Ct. 883.

[109] People v. Hoogy, 269 N.W. 605 (Nov., 1936), discussed *supra*, p. 672).

[110] Harrison v. Hartford Steam Boiler Inspection and Ins. Co., 187 S.E. 648 (June, 1936), reversed by a 5 to 4 vote in Hartford, etc., Co. v. Harrison, 57 S. Ct. 838 (May, 1937).

[111] City of Birmingham v. Hood-McPherson Realty Co., 172 So. 114 (Jan., 1937).

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go, and park his vehicle alongside of his property (within reasonable limitations), without the exaction or payment of a tax or fee to the municipality, or to have his property defaced by superimposed obstructions, barriers, or parking meters placed alongside." Doubtless the decision will be distinguished on the ground that it was based, in part, upon the terms of the deed whereby the land was dedicated as a public street.

Dividing seven to two, the Washington court ruled[112] that those who held licenses to fish with gill nets during the years 1932 and 1933 cannot be permitted to continue to do this while all others, including those who held licenses only for the year 1934, are excluded. The majority felt that the dates selected were purely arbitrary, while the dissenting judges pointed out: "To uphold this . . . act will not deprive relator of a privilege of which he has heretofore availed himself. On the other hand, the effect of this decision will be to deprive others of a livelihood—a privilege of which they had availed themselves and which they had exercised for years. For, if gill net licenses must be issued to all who apply, it is obvious that, in the interest of conservation, the gill net must go the way of the trap."

Other cases are discussed in section five.

Eminent Domain. Stating that "the law of each age is ultimately what that age thinks should be the law," and that "use of a proposed structure, facility, or service by everybody and anybody is one of the abandoned universal tests of a public use," the New York court[113] sustained the condemnation of lands for the construction by a public corporation of apartments to be rented to "persons of low income." The contention that private enterprise "is adequate and alone appropriate" for such an undertaking was dismissed as contrary to obvious facts.

V. FISCAL POWERS

Taxation. New Hampshire is one of the few states still denied the privilege of levying a graduated inheritance tax. In an advisory opinion of last March,[114] the court advised the legislature that it is equally unconstitutional to exempt "a fixed and more than nominal amount of the value of all estates from the tax on legacies and successions," since such an exemption would, in effect, convert the tax into a progressive one. The Washington court follows the same rule as to income taxes. Hence it concluded, as a correlative doctrine, that an income tax upon corporations is unconstitutional unless the same tax is also made applicable to individuals.[115] "Since the act imposes a property tax," the opinion

[112] State v. Huse, 59 P. (2d) 1101 (Aug., 1936).
[113] New York City Housing Authority v. Muller, 1 N.E. (2d) 153 (March, 1936).
[114] Opinion of the Justices, 190 A. 801, 808.
[115] Petroleum Navigation Co. v. Henneford, 55 P. (2d) 1056 (March, 1936).

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stated, "it is subject to the uniformity clause of the . . . state constitution."

The New Hampshire court[116] also advised the legislature that a sales tax must be levied upon the seller, and not upon the purchaser, since otherwise the burden placed upon the seller of collecting and accounting for the tax "would be in derogation of due process as a confiscatory deprivation of his rights of equality." The Idaho court,[117] like the federal Supreme Court,[118] was of a contrary opinion.

The state courts continue to sustain chain store taxes,[119] except, of course, where the basis of the rates is such as to be unacceptable to the federal Supreme Court. This is really remarkable, in view of the fact that the federal Supreme Court still divides five to four in such cases.

Spending. The New York court's ruling that the government may engage in low-cost housing projects is one of the most significant decisions of recent years. Coming, as it does, from a court which enjoys a position of prestige second only to that of the federal Supreme Court, it should have a decided influence upon the tide of judicial opinion. It was overshadowed, however, by the decisions sustaining the use of public funds to support social insurance programs.

The New Hampshire court has undertaken to classify the granting of an exemption from taxation as a grant of public funds, defensible only when a cash subsidy would be valid.[120] The reasoning has much to commend it, and it is to be hoped that the doctrine will strike root.

[116] Opinion of the Justices, 190 A. 801, 804.

[117] Johnson v. Diefendorf, 57 P. (2d) 1068, 1071 (May, 1936).

[118] Pierce Oil Corp. v. Hopkins, 264 U. S. 137 (1924).

[119] State v. Simpson, 166 So. 227 (Fla., Feb., 1936), followed in Dunlap Tire and Rubber Co. v. Lee, 171 So. 331 (Dec., 1936); Tolerton and Warfield Co. v. Iowa State Board, 270 N.W. 427 (Ia., Dec., 1936); Safeway Stores, Inc. v. Vigil, 57 P. (2d) 287 (N. Mex., April, 1936). In the Simpson case, one judge wrote a forceful opinion demanding that the state court reject the reasoning of the federal Supreme Court and hold such taxes void.

[120] Opinion of the Justices, 190 A. 425, 428–9 (Feb., 1937).

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Congressional Investigations During Franklin D. Roosevelt's First Term. Much has been written on Congressional investigations. The theoretical questions connected with them have been explored. Their place in our governmental system has been reasonably well established.

Recent developments give a new perspective. The high point of Congressional investigations, so far as the previous literature was concerned, came in a time of stagnating major party politics. There was an attitude of "stand by" on the part of the Administration; defeatism pervaded the official minority. Conditions in the Senate, however, permitted the dissident Republicans, in combination with the Democrats, to constitute an intermittent majority for purposes of criticism if not of construction. When malfeasance and misfeasance were allowed to creep into administration, meeting little resistance from within, the check had to come from without, and it came in the form of Congressional investigations.

Because of the position of the investigation in the early twenties as predominantly a check on administration, it may be that this feature has been exaggerated in previous thinking on the subject. Experience under the New Deal—when, for the first time since investigations were well publicized, a strong party majority, presidentially led, was committed to a program of social change—has shown that investigations may serve as valuable aids to an Administration.[1] This salient fact is brought in relief by a classification of all inquiries of the period.

Analysis in Terms of Primary Purpose. One hundred and sixty-five investigations were authorized by, or conducted during, the 73d and 74th Congresses.[2] This figure includes everything that could logically, even though remotely, be called an investigation—not only those conducted by Congressional standing and select committees in accordance with a Congressional resolution, but also those made by administrative bodies pursuant to authority conferred by an act or a resolution. The term is construed so broadly, in fact, that it includes resolutions requesting administrative bodies to transmit information which they may already have at hand.[3]

[1] Investigations became an issue in the recent presidential campaign when Governor Landon, in his Los Angeles speech of Oct. 20, 1936, vigorously attacked "a committee that is out to get the critics" as distinguished from "a committee that is out to get the crooks."

[2] This study covers over three and three-quarter years, beginning March 4, 1933, and running through 1936. It is obviously impossible to cite final results in connection with a score of investigations that remained in progress after the beginning of the 75th Congress.

[3] No attempt is made to include investigations that a standing committee may conduct on its own initiative without a Senate or House resolution. An example was the inquiry, voted by the Senate Commerce Committee in June, 1935, of charges of

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Investigations may be said to have the following six main purposes: first, to aid the Administration;[4] second, to check the Administration; third, to obtain information needed where Congress assumes the initiative in legislating; fourth, to exercise "social leverage" through publicity and, closely interwoven with this, to mould public opinion; fifth, to try in connection with impeachment; sixth, to judge the qualifications or behavior of members of Congress. Seldom, of course, is an investigation confined to one of these purposes; there is much overlapping. The following classification is based upon what seemed to be the primary emphasis in each case. Sometimes the dominant motivation was revealed only in the debate in Congress at the time of the adoption of the authorizing resolution.[5]

1. *To Aid the Administration.* A total of 51 investigations may be classed as aids to the Administration. Especially significant during the New Deal period has been the kind of inquiry that facilitates the passage of legislation asked for by the Administration. This may amount to nothing more than a request for the transmission of relevant information which strengthens the Administration's case in favor of a proposed measure.[6] Sometimes, however, the investigation is a separate inquiry

corruption in the Department of Commerce. The accusations were made by E. Y. Mitchell, who had been ousted by the President as Assistant Secretary of Commerce after refusing to resign. The Department was sustained. See Hearings of the Senate Committee on Commerce (June 19, 20, 21, 1935), 74th Cong., 1st sess., on "Alleged Irregularities in the Department of Commerce;" also Mr. Mitchell's volume, *Kicked In and Kicked Out of the President's Little Cabinet* (Washington, Andrew Jackson Press, 1936).

[4] The term "Administration" has at least two meanings. It may refer merely to those who execute the laws in a routine way. But it is used here in the political sense to include the President and those who work with him in formulating as well as carrying out general governmental policies. Thus used, it is capitalized in this study.

[5] So far as classification must be guided by the real effect, this may not be clear until the investigation has been completed and its results put to use. Thus the Byrd resolution to investigate executive agencies of the government with a view to coordination and economy (S. Res. 217, 74th Cong., 2d sess., Feb. 24, 1936) at first seemed a "check"; but the President, pointing out that he had been thinking on the subject previous to the resolution, maneuvered skillfully and lost no time in taking over direction. On March 20, he wrote Speaker Byrns, of the House, suggesting that that body create a committee similar to the Senate's to "coöperate with me and the committee that I shall name in making this study . . . to avoid duplication of effort in the task of research." It remains to be seen whether the Brookings Institution reports for the Senate and House committees—the first of which, on the subject of consolidation of credit agencies, appeared on January 14, 1937—will run contrary to the January report by the President's Committee, "Administrative Management in the Government of the United States."

[6] For example, the House resolution, early in 1933, which asked the Secretary of Agriculture for information and also for recommendations respecting farm mortgages and debts (H. Res. 69, 73d Cong., 1st sess., Mar. 22, 1933).

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neatly arranged to reinforce a Presidential recommendation regarding major legislation. Thus the inquiries into lobbying by utilities smoothed the way for the passage of laws restricting holding companies in accordance with Presidential policy.[7] A particularly clever tactical move was the timing of these lobbying investigations to break at the moment when Congress was considering both the Wheeler-Rayburn bill[8] to regulate holding companies and the T.V.A. amendments.[9] On July 1, 1935, the House defeated the so-called "death sentence" clause of the Wheeler-Rayburn bill. The resolution ordering an investigation in the House was passed on July 8; the Senate investigation was ordered three days later. Only seven weeks later, after the House had reversed itself, the President was able to sign the Wheeler-Rayburn bill (containing the "death sentence" in only slightly modified form),[10] and also the T.V.A. amendments which aided the Authority by giving it clarifying and remedial legislation based upon its two years of operation.

Similarly, the investigation into stock exchange practices and later into banking[11] (which, although begun before Roosevelt, received strong Administration backing after March, 1933) spectacularly placed in focus before the nation the questionable practices of "money changers" and made easier the task of passing such legislation as the Banking Acts of 1933[12] and 1935,[13] and the Securities Act of 1933[14] and Securities Exchange Act of 1934.[15] There had been pronounced reaction to the original Securities Act during 1933 and 1934, but the investigation helped the Administration to make the second act an advance rather than a retreat by extending regulation to stock exchanges. Thus an inquiry can be made to serve as a prop for an Administration policy already under way.

[7] H. Res. 288, 74th Cong., 1st sess., July 8, 1935; and S. Res. 165, 74th Cong., 1st sess., July 11, 1935. The legal difficulties of the committee set up under the latter resolution are dealt with below.

[8] S. 2796 (Pub. 333–74th Cong.) Aug. 26, 1935.

[9] H. R. 8632 (Pub. 412–74th Cong.) Aug. 31, 1935.

[10] Two other investigations begun before Roosevelt contributed aid to the passage of this bill: (1) The inquiry by the House Committee on Interstate and Foreign Commerce into the ownership and control of public utility corporations by holding companies (H. Res. 59, 72d Cong., 1st sess., Jan, 19, 1932). See House Report 2192, 72d Cong., 2d sess.; 827, 73d Cong., 2d sess., 6 parts; and 1273, 73d Cong., 2d sess., 3 parts. (2) The Federal Trade Commission's investigation of electric and gas public utility corporations (S. Res. 83, 70th Cong., 1st sess., Feb. 13, 1928). A total of 84 interim reports and seven exhibit volumes—S. Doc. 92, parts 1 to 84 (parts 51 to 84 were issued since March 4, 1933). Part 71B is an index of parts 1 to 20 and exhibit volumes; part 77A of parts 21 to 45; part 84D (in preparation) of parts 46 to 84.

[11] S. Res. 84., 72d Cong., 1st. sess., Mar. 4, 1932.

[12] H. R. 5661 (Pub. 66–73d Cong.) June 16, 1933.

[13] H. R. 7617 (Pub. 305–74th Cong.) August 23, 1935.

[14] H. R. 5480 (Pub. 22–73d Cong.) May 27, 1933.

[15] H. R. 9323 (Pub. 291–73d Cong.) June 6, 1934.

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Still another type of collaboration was illustrated by the House and Senate investigations of air mail contracts concluded under the Republican régime.[16] A reflection on another Administration, with the implication that the current management is more honest and efficient, aids the latter.[17]

A further phase of coöperation may lie in the assistance that a Congressional investigation can give to an executive body whose activities are closely articulated with Presidential policy. This indirection may be necessary because the investigative powers of administrative bodies are more limited than those of legislative committees.[18] A current example has been the investigation of railroad financing by the Senate Committee on Interstate Commerce.[19] It was said that part of the purpose of the authorizing resolution was to enable the Committee to get information which the Interstate Commerce Commission was unable to obtain.[20]

Another type of essentially defensive aid may be illustrated by the inquiry into Dr. Townsend and his scheme of old age pensions.[21] Congressmen of both houses and the Administration were becoming alarmed at the increasing power of the Townsend movement. When logic failed to arrest it, the investigation was resorted to. Although the Doctor was able to assume somewhat the rôle of a martyr, his cause probably lost more prestige and following than it gained as a result of the hearings and prosecution[22] that followed his contumacy.[23]

In an election year, an investigation may supply handy campaign ammunition to the party in power. Thus the Senate committee investigating lobbying devoted a portion of its public hearings to such organizations as the Crusaders, the Farmers' Independence Council, and the Sentinels of the Republic, revealing that several of these groups, hostile

[16] S. Res. 349, 72d Cong., 2d sess., Feb. 25, 1933, and H. Res. 226, 72d Cong., 1st sess., June 21, 1932.

[17] In this specific instance, however, the repercussions perhaps over-balanced the advantages to the Administration.

[18] Some of the limits are brought out in: "Security Exchange Commission's Power of Search," *George Washington Law Review*, Mar., 1935, Vol. 3, pp. 356–369, by O. S. Colclough; and "Constitutionality of Investigations by the Federal Trade Commission," *Columbia Law Review*, Jan. and Mar., 1928, Vol. 28, pp. 708–733, and 905–937, by Milton Handler.

[19] S. Res. 71, 74th Cong., 1st sess., May 20, 1935.

[20] *Congressional Record*, 74th Cong., 1st sess., p. 7818; and 75th Cong., 1st sess., p. 858.

[21] H. Res. 443, 74th Cong., 2d sess., Mar. 10, 1936.

[22] See below.

[23] A defensive inquiry was employed when Superintendent Wirt made his charges of "reds" in the government in 1934. An open investigation of him and some of those whom he accused served emphatically to bring out the disproportion of the charges (H. Res. 317, 73d Cong., 2d sess., Mar. 29, 1934).

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to the New Deal, received funds from the same individuals, some of whom were wealthy industrialists and financiers.[24]

2. *To Check the Administration.* Forty-five of the 165 investigations may be called checks on the Administration. Theory assumes that the legislature has a duty not only of legislating but also of supervising the executive branch—that it should "hold administrative officers to a due accountability for the manner in which they perform their duties."[25] In line with this Congressional task, investigations may check administrative officers and thereby indirectly curb the current political leadership. So pronounced was this aspect of investigations in the preceding decade that observers wondered how far Congress would embarrass any President who chose to be an innovator.

For the period of this study, however, investigations that were intended to embarrass or that seriously censured the Administration have been relatively scarce. In only a few cases have inquiries pointed to inefficiency or impropriety.[26] Following the airplane crash in which Senator Cutting was killed, the Senate ordered an investigation into the causes of the wreck;[27] the facts brought out in public hearings led the committee to find fault with the Bureau of Air Commerce of the Department of Commerce and to recommend an overhauling of its personnel.[28]

Congressional requests for information that the Administration has at hand, in an unpublished document or otherwise, may be friendly acts of cohesion;[29] but some requests amount to an attack. Sometimes the rumor of dissension on the administrative side of government gives an opening. Critics of the Administration seek to drag out the supposedly suppressed sentences in a report.[30]

[24] The Senate committee on campaign expenditures (S. Res. 225, 74th Cong., 2d sess., Apr. 1, 1936) was able to be of assistance by, among other things, disclosing, on the eve of a speech in Maine by Governor Landon, that American Liberty League backers had contributed to the Republican campaign fund in Maine.

[25] W. F. Willoughby, *Principles of Legislative Organization and Administration* (1934), p. 157.

[26] Presidential Secretary Louis Howe was under some shadow of suspicion for his part in the purchase of some CCC toilet kits (S. Res. 88, 73d Cong., 1st sess., June 2, 1933), but the investigating committee found no evidence of corruption or improper motive (S. Rp. 144, 73d Cong., 1st sess).

[27] S. Res. 146, 74th Cong., 1st sess., June 7, 1935.

[28] Reverberations continued until the resignation on February 28, 1937, of the director of the Bureau, Eugene L. Vidal, which at least indirectly was related to the disclosures.

[29] As S. Res. 190, 73d Cong., 2d sess., Feb. 15, 1934, asking the Administrator of Public Works for information concerning the organization, policies, and program of the PWA.

[30] Although such action cannot be called common, several illustrations may be cited, including S. Res. 294, 74th Cong., 2d sess., Apr. 30, 1936, and S. Res. 107. 74th Cong., 1st sess., Mar. 16, 1935 (requested Secretary of Interior to submit reports of inquiries into alleged communistic activities at Howard University);

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A prime example of the way in which politics may enter into a resolution ordering an inquiry was afforded by S. Res. 265 of the second session of the 74th Congress (April 27, 1936). Senator Vandenberg sponsored a resolution, which tended to embarrass the Administration, requiring the Secretary of Agriculture to submit a list of all who received A.A.A. benefit payments in excess of $10,000 for a single year. But the Administration retaliated by having its Congressional friends add to the resolution a request for information on tariff benefits to large manufacturing concerns.[31]

Interesting to the observer, both because it was an innovation and because of the possibilities involved in close-range, semi-confidential "checking" was the provision[32] for a special committee in the Senate to confer with the Secretary of the Treasury regarding the administration and effect here and abroad of the Silver Purchase Act of 1934.[33]

3. *To Aid in Legislating.* An investigation may be held for the purpose of obtaining information to help Congress legislate. This does not necessarily mean that there is a specific legislative intent at the beginning of the investigation. The inquiry may be conducted to determine whether legislation is desirable. As has been seen, a number of investigations have facilitated the passage of legislation in accordance with Administrative wishes. Such inquiries are classified under "aids to the Administration." All other investigations aimed at new legislation—totaling 47—are included under the present heading.

Only a few of these were relatively important, the outstanding being the inquiry by the Senate committee into the manufacture and sale of arms and other war munitions.[34] Others were: by the Senate Committee

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S. Res. 175, 73d Cong., 2d sess., Feb. 21, 1934 (sought information on past and current connections of employees of the NRA); H. Res. 430, 74th Cong., 2d sess., Mar. 2, 1936 (asked for report of the Bureau of Agricultural Economics relative to cotton reduction which, according to the resolution, had been made public with certain deletions and alterations).

[31] An unanswered question—perhaps unanswerable due to separation of powers—is how far Congress can go in getting information from an executive. There are a few instances where the requested material apparently never was submitted. Only once was there any record of a definite refusal. The House asked the President for the full text of one of his press conferenes (H. Res. 212, 74th Cong., 1st sess.), but he considered this a bad precedent (*Congressional Record*, 74th Cong., 1st sess., p. 7186). No issue was made of it.

[32] S. Res. 187, 74th Cong., 1 sess., Aug. 16, 1935.

[33] The committee has as yet made no report.

[34] S. Res. 206, 73d Cong., 2d sess., Apr. 12, 1934. Hearings, beginning Sept. 4, 1934 (24 parts). Committee issued nine reports: S. Rp. 400, 74–1, reported progress; S. Rp. 944, pt. 1, 74–1, Naval Shipbuilding; S. Rp. 944, pt. 2, 74–1, study of findings of War Policies Commission; S. Rp. 577, 74–1, recommended H. R. 5529 to prevent war profiteering; S. Rp. 944, pt. 3, 74–2, recommended nationalization of manufacture of war requirements; S. Rp. 944, pt. 4, 74–2, criticized War Department bills S. 1716 and S. 1722 relating to war-time mobilization of industry; S.

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on Commerce into safety at sea;[35] by the Federal Trade Commission into conditions with respect to the sale and distribution of dairy products in the United States;[36] by the Senate Committee on Manufactures into the desirability of establishing a National Economic Council.[37] Also included in this category are requests upon the Tariff Commission for foreign and domestic production cost figures on various items.

4. *To Exercise "Social Leverage" Through Publicity.* One of the functions of a legislative body may be to act as a national forum and thereby to become a "teaching apparatus." The Congressional investigation may be the means of achieving this end. It hardly could be said that any resolution was passed with the primary purpose of obtaining social leverage either by moulding public opinion or by scaring through publicity; but these frequently were important elements and were factors in perhaps half of the total investigations.

Representative Sabath's inquiry into real estate bondholders' reorganizations[38] was primarily for the purpose of determining the best legislation to pass to prohibit the abuses found, but it was pointed out to the House that it was most important that the public be made aware of the facts, and that the investigation would "throw the fear of God into the hearts of those who are robbing the people." The LaFollette committee's investigation of strike-breaking, industrial espionage, and other infringements of civil liberties fits snugly into this group.[39] Likewise, the munitions inquiry paid particular attention to social leverage and made every effort to mould public opinion in accordance with the committee's views.

Another angle of social leverage is the possibility of an investigation arousing public opinion and as a result stimulating activity by state legislatures. Early in 1934, Governor Lehman of New York was laboring for passage of a program of more strict regulation of public utilities. The task began to seem hopeless, especially after the defeat in the state senate of two of the major bills. The Federal Trade Commission, however, gave timely assistance by making available various documents and evidence which it had assembled in its investigation of public utilities.[40] The final result was virtual adoption in New York of the Lehman program.[41]

Rp. 944, pt. 5, 74–2, discussed existing neutrality and embargo laws; S. Rp. 944, pt. 6, 74–2, further discussed the adequacy of existing legislation; S. Rp. 944, pt. 7, 74–2, included a study of government manufacture of munitions.

[35] S. Res. 7, 74th Cong., 1st sess., Mar. 16, 1935.

[36] H. Con. Res. 32, 73d Cong., 2d sess., June 16, 1934.

[37] S. Res. 114, 74th Cong., 1st sess., Aug. 24, 1935.

[38] H. Res. 412, 73d Cong., 2d sess., June 15, 1934.

[39] S. Res. 266, 74th Cong., 2d sess., June 6, 1936.

[40] Such assistance, of course, was indirectly "aid to the Administration," since it was aid to a state ally of the Administration.

[41] The key measure strengthened the right of municipalites to own and operate

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5. *To Try in Connection with Impeachment.* Two resolutions were passed directing investigations into the official conduct of two judges.[42]

6. *To Judge the Qualifications or Behavior of Members of Congress.* Two Senate seats were contested during the period under consideration.[43] Thirteen House resolutions were passed awarding contested seats,[44] as well as one resolution declaring that neither of two aspirants to a Louisiana seat had been elected in accordance with state law, and announcing that a vacancy existed.[45]

Statistical Summaries. It is appropriate to review in tabular form the categories that have been examined and then to summarize the mechanics of the investigative process. From the standpoint of major purpose, the investigations from March 4, 1933, to the end of 1936 may be divided thus:

Authorized by	*Invs. to check Administration*	*To aid Administration*	*To aid in legislating*	*To try in connection with impeachment*	*To judge qualifications of members*	*Totals*
Senate	43	23	34		4	104
House	2	18	9	2	16	47
Joint Senate and House		10	4			14
Totals	45	51	47	2	20	165

their own gas and electric plants. *Laws of the State of New York*, 1934, Chap. 281. The other bills in the program were Chaps. 212, 279, 280, 282, 283, 284, 285, 286, 287.

[42] H. Res. 120, 73d Cong., 1st sess., Apr. 26, 1933, directed an inquiry into alleged misconduct on the part of Judge James A. Lowell of Massachusetts; but his death occurred before this was completed. H. Res. 163, 73d Cong., 1st sess., June 1, 1933, concerned Judge Halsted L. Ritter. The subcommittee investigating pursuant to the resolution voted two to one against recommending impeachment, but the full Judiciary Committee, after voting to drop the charges, reversed itself, with the result that the Judge was impeached by the House. The Senate, on April 17, 1936, found him guilty of high crimes and misdemeanors in office.

[43] Those of Senators Cutting and Holt. The committee's report (S. Rp. 793, 74th Cong., 1st sess.) on the former, published after his death, found no evidence which reflected "upon the honor or integrity" of the Senator. S. Rp. 904, 74th Cong., 1st sess., contained both a majority and a minority opinion, the Democrats voting to seat Mr. Holt, the Republicans opposing on the ground that he had not reached the age of thirty when elected.

[44] Eight Republicans, four Democrats, and one Farmer-Laborite were seated as a result.

[45] H. Res. 231, 73d Cong., 2d sess., Jan. 29, 1934. See *Congressional Record*, 73d Cong., 2d sess., p. 1510.

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On the basis of the means of investigation, the distribution was as follows:

Authorized by	*Invs. by select committees*	*Invs. by standing committees*	*Invs. by commissions*	*Requests for information from administrative bodies*	*Invs. by joint committees*	*Invs. by Comptroller General*	*Invs. of qualifications of members by standing election committees*	*Totals*
Senate	13	25	13	49		2	2	104
House	11	17		5			14	47
Joint Senate and House			10 (including 5 by authority of a bill)	1 (by authority of a bill)	3			14
	24	42	23	55	3	2	16	165

The foregoing tables give point to some comment on the relative activity of the two houses of Congress. Professor Dimock[46] and Professor Rogers,[47] among others, have shown that the Senate has become the more important investigator, whereas in earlier times the House was the leader in this respect. In bringing about this change, the freedom of debate in the Senate associated with the absence of effective closure afforded a fulcrum for leverage which drew its real power from the over-representation of the agrarian sections. These factors operated when the emphasis of investigations was on checking the Administration. It is interesting to note that the Senate's rôle has continued to be predominant in the period since 1933 when the stress has been on collaboration with the Administration. So far as there were checks, however, the action was almost entirely in the Senate.

From the viewpoint of the instrument chosen, two facts are worthy of note. First, the House confined most of its investigating to its own committees, and not once did it, by itself, ask for an inquiry through one of the commissions. Second, in both houses standing committees were preferred to select committees.

Expenditures and Staffing. Complete up-to-date information on the cost of investigations is not available. Furthermore, there obviously are many expenses which never can be determined. A completely accurate picture of the cost to the taxpayer would include such overhead as an apportionment of the members' salaries covering the time spent in hearings. Moreover, commissions conducting an investigation do not always

[46] Marshall E. Dimock, *Congressional Investigating Committees* (1929), p. 30.
[47] Lindsay Rogers, *The American Senate* (1926), p. 202.

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receive a special appropriation for it. Even a Congressional standing committee sometimes is asked to make a minor investigation without any special appropriation being granted, the committee taking its expenses from its regular funds. And administrative bodies frequently lend time and individuals for the aid of investigating committees.[48]

With reference to the inquiries during the period in question, a fair idea of their aggregate cost can be gained by totaling the individual appropriations. True, an appropriation need not be spent in full; it is a maximum, and on a few occasions a report was made that the entire amount had not been used. Nevertheless, in the light of the fact that the majority of investigations required additional allotments and that in the past the unused portions of appropriations have not been large, it seems safe to assume (even if the loan of administrative personnel is disregarded) that a figure based on the total of the appropriations made does not greatly exaggerate the actual expenditures.[49]

The grand total for the two Congresses, with deductions made for portions known not to have been used, was $3,080,234, divided as follows:

For commissions		
Communications Comm. (A. T. &. T.)	$1,150,000	
Railroad Investigating Comm.	63,000	
Federal Trade Comm. (Agricultural income)	150,000	
(Milk: includes $60,000 from own funds)	90,000	
(Public utilities)	230,000	
Aviation Comm.	75,000	$1,758,000
For Secretary of Agriculture for investigating traffic conditions		75,000
For joint committees		10,000
For Senate standing and select committees		876,479
For House standing and select committees		369,755

It is interesting but hardly surprising that, considering committees only, the Senate outlay was well over twice that of the House.

It is aside from the point to enter into a justification of these expenditures. Suffice it to say that, looked at merely from a dollars and cents angle, the balance-sheet of investigations would probably show a profit. For example, the committee that inquired into bondholders' committees pointed out in a preliminary report that it had turned over to the Bureau of Internal Revenue information to enable it to collect at least $1,000,000

[48] This phase of investigations has become so important that it is dealt with below.

[49] For investigations authorized before but continuing into the Roosevelt term, only appropriations made during the 73d and 74th Congresses are included. Two or three unavoidable exceptions have an insignificant effect on the figures.

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in taxes; while Senator Fletcher's committee investigating stock exchanges and banking stated in its final report that "to date, assessments for deficiencies and penalties have been levied by the Bureau of Internal Revenue in a sum exceeding $2,000,000 as a direct result of the revelations before the subcommittee." Thus, these two claims added together would just about cover the direct outlay in behalf of all investigations conducted during the period of nearly four years with which the present study is concerned.

Experience had indicated that the relative success or failure of an investigation may be determined by the care taken in preparation. Extemporaneous cross-examination in the hearings does not suffice—a considerable amount of "spade-work" usually is necessary. In this connection, it has sometimes seemed desirable for a committee to borrow executive personnel trained in the particular subject; in fact, the Congressional resolution of authorization occasionally has directed it. The practice is not new, but the collaborative spirit marked in investigations since 1933 invited extended steps along these lines. The outstanding example was furnished by the Wheeler committee investigating railroad financing, which not only received substantial help from the Interstate Commerce Commission in accordance with the intent of the resolution, but also borrowed personnel from agencies administering relief.[50] Growing rumblings of discontent with a procedure which thus gave Congress limited knowledge of, or control over, expenses of its committees brought a counter-attack in the form of a provision inserted by the House Appropriations Committee in the First Deficiency Appropriation Bill of the 75th Congress[51] (which contained a large allotment for relief) that no part of the funds should be used "to pay the compensation of any person, not taken from relief rolls, detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either house of Congress under special resolution thereof." The House approved, but the Senate, after hearing charges that the clause was partly the result of propaganda on the part of those being investigated, offered a substitute merely requiring a full report each month by executive agencies on the number of employees working for committees. The issue was postponed when the bill finally was passed containing the House proviso, but with the condition that it should not take effect until 30 days after enactment.[52]

[50] The LaFollette committee investigating infringements of civil liberties also was an important borrower. In January, 26 employees who were being paid from relief funds, with annual salaries totaling $61,420, were loaned to Congressional investigating committees (see *Congressional Record*, 75th Cong., 1st sess., p. 562).

[51] H. R. 3587 (Pub. 4–75th Cong.) Feb. 9, 1937.

[52] The Independent Offices Appropriation Bill (H. R. 4064) went to conference on Feb. 17, when the Senate eliminated a similar House stipulation that none of

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The student of government cannot help wondering whether this dependence of Congressional committees on executive personnel may not be a significant sign pointing to the desirability of conducting investigations through administrative agencies. But substantial movement in this direction must wait a liberalization of the law and doctrines under which these agencies can proceed.

Legal Developments. The law on investigations was not greatly changed by court decisions from 1933 to 1936. Of the four instances in which the courts were given an opportunity to discuss the questions raised, three were concerned with procurement by Congressional committees of papers and correspondence, and the fourth with the failure of an individual to appear at a hearing in compliance with a committee summons.[53]

A slight broadening of the power of Congress to punish for contempt of a committee was won through the decision in the one case which went to the Supreme Court of the United States, i.e., Jurney v. MacCracken.[54] The chief issue was over the contention of the defendant, William P. MacCracken, Jr., that "the power to punish for contempt . . . may be used by the legislative body merely as a means of removing an existing obstruction to the performance of its duties," and that this power ceases as soon as the obstruction is removed or its removal becomes impossible. Hence, MacCracken maintained, the Senate had no power to punish a witness who destroyed papers after the service of a subpoena. He insisted that Congress was without power itself to impose punishment for a past act which it regarded as contemptuous; and that for such offenses punishment must be inflicted by the courts.

MacCracken,[55] a Washington lawyer, had been served with a subpoena *duces tecum* on January 31, 1934, requesting him to appear before the Senate committee investigating air mail contracts and to bring with him, from his files, correspondence between him and his aviation company clients. He at once wired his clients asking if they wished to authorize him to make the documents available to the Senate committee. Affirmative answers were received from all, but two replies did not immediately come in. Before the Western Air Express, Inc., answer was received, a Mr. Givvin of that company, on orders from his superior officer, Mr. Hanshue, went to MacCracken's office and, with the consent of the latter, took away certain letters (all allegedly, but not actually, personal) from the files. Similarly, Mr. Brittin, of Northwest Airways,

the funds should be made available for expenses in connection with Congressional investigations.

[53] Not all questions of contumacy result in actual litigation. It occasionally happens that a committee encounters opposition which it does not combat.

[54] 294 U. S. 125 (1935).

[55] A convenient reference for the happenings surrounding the MacCracken incident is S. Doc. 51, 74th Cong., 1st sess., "William P. MacCracken, Jr., et al."

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by permission not of MacCracken but of MacCracken's partner, went through his company's files in the law office and removed some letters. The correspondence which Givvin had taken was, however, delivered to the committee on February 3. "Most" of Brittin's letters also came into the hands of the committee through the aid of investigators of the Post Office Department, who searched through waste and managed to paste torn bits together in their original forms. Brought before the bar of the Senate to show cause why they should not be punished for contempt, Givvin and Hanshue were found not guilty. Brittin, however, was adjudged guilty and sentenced to ten days in jail. MacCracken also was found in contempt, but was released on a $5,000 bond pending appeal. A petition for writ of habeas corpus was dismissed by the Supreme Court of the District of Columbia, but the Court of Appeals reversed the judgment.[56] The case then went to the United States Supreme Court, which held that "the power of a house of Congress to punish a private citizen who obstructs the performance of its legislative duties is not limited to the removal of an existing obstruction, but continues after the obstruction has ceased or its removal has become impossible," and added that where a proceeding for contempt is within the jurisdiction of a house of Congress, questions whether the person arrested is guilty or has so far purged himself that he does not deserve punishment are questions for the house to decide, and which cannot be inquired into by a court by a writ of habeas corpus.

The second legal question concerned the perennial issue of search and seizure.[57] Developments in this regard during the period have not been conclusive. Two separate injunction suits were brought to restrain the exercise of Senate lobby committee subpoenas, one of which suits also sought to enjoin the Federal Communications Commission from procuring copies of telegrams for the committee.

Early in 1936, the committee issued a subpoena asking from the Western Union Company copies of all telegrams sent or received by the Chicago law firm of Winston, Strawn, and Shaw between February 1 and December 1, 1935. Chief Justice Wheat of the District of Columbia Supreme Court signed a permanent injunction enjoining the committee from seizing or making use of the firm's telegrams, holding that the subpoena was illegal, being "obviously a mere fishing expedition of the kind that has been condemned so many times."[58]

Not long afterward, the same Justice Wheat handed down a decision[59]

[56] 72F (2d) 560.

[57] Dimock has written: "The arbitrary power of committees to demand the production of papers, once the power has been granted by the House, has been the chief subject of denunciation by witnesses throughout the history of investigations" (*op. cit.*, p. 154).

[58] New York *Times*, Mar. 12, 1936.

[59] *Ibid.*, Apr. 9, 1936.

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on an injunction suit of William Randolph Hearst. Once again the point at issue was the extent to which a branch of Congress or its agency may go in search and seizure. Failing to throw much light on these puzzling questions, the Justice denied the application for an injunction to restrain the committee from making use of a telegram, specifically subpoenaed from the files of the Western Union, which had passed between Hearst and an editorial employee. This phase of the case touched on press freedom as guaranteed in the First Amendment. Speaking extemporaneously, Justice Wheat said: "You cannot say that the proprietor of a newspaper is not amenable to ordinary judicial process or that his communications with his subordinates are sacred. I do not think any question of the freedom of the press is involved." But he also argued—and here he seemed partially to reverse himself on his previous Strawn decision—that the court was without jurisdiction as to the Senate committee, and that he did not know of "any case in which any court has assumed to dictate to a committee of the Senate what it should do and what it should not do;" although he himself had recently dictated to a committee that it could not issue a blanket subpoena. One can readily agree with Judge Wheat's statement later in the decision that it is hard to tell "exactly how that leaves us." His opinion was sustained by the Court of Appeals on November 9 in a decision[60] which held that it was powerless to act against the legislative body, even though the seizure of telegrams might have been illegal, and maintained that it was not within its jurisdiction to interfere with a legislative body performing a legislative function. Based on this reasoning, it would appear that a court could not declare unconstitutional an act of a Congressional committee.

Mr. Hearst also at the same time sought to enjoin the Federal Communications Commission from "unlawfully" searching the files of telegraph companies. His action was an attempt to dissolve a novel administrative relationship which exemplified the collaborative spirit of the times. The Commission allegedly had combed these files and made copies of telegrams which the committee wanted.[61] Chief Justice Wheat was convinced that he had jurisdiction over the Commission and "a perfect right" to enjoin it from proceeding unlawfully. The immediate issue was not faced, however, since the Commission had informed the court that its investigation was completed and that it had no copies of Hearst telegrams in its possession. The application for a preliminary injunction was therefore denied "without prejudice to its renewal upon any evidence

[60] U. S. Ct. Appls. D.C., Hearst v. Black *et al.*, No. 6808.

[61] The Senate, spurred by Senator Borah (who claimed he was not acting in the spirit of censure), passed a resolution (S. Res. 245, 74th Cong., 2d sess., Mar. 9, 1936) asking the Communications Commission for a report on its activities in this connection and for information on the authority under which it took action. The reply (S. Doc. 188, 74th Cong., 2d sess.) urged the Commission's interest, due to alleged forging of telegrams and to burning of file copies.

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of further activities along the lines attacked here." This part of the decision was likewise upheld by the Court of Appeals.[62]

The final court action concerned the contumacy of Dr. Francis Townsend. Brought before a House committee to testify regarding his Old Age Revolving Pensions, Ltd., he strode out of the hearings on the third day and refused to return. The House, on May 28, approved the turning over of the case to the federal attorney for the District of Columbia. Townsend and two aides were not indicted by a federal grand jury until December 3, one month after the Presidential election. On February 25, 1937, a District court jury found him guilty of failing to comply with a House committee summons, this being based on his absence during the later hearings.[63] His two associates previously had entered pleas of guilty and had been fined.

A further aspect of the legal developments, which indirectly reflected the foregoing episode, was the enactment, shortly before the close of the 74th Congress, of a statute to facilitate procedure against contumacy. The new provision[64] permits the Vice-President or the Speaker of the House, as the case may be, to certify charges of contumacy to the appropriate federal attorney when Congress is not in session. Previously it was necessary for the Senate or House to be in session before a committee could start criminal proceedings against a recalcitrant witness. The law was used for the first time by the subcommittee of the Senate Committee on Education and Labor investigating violations of civil liberties, when on August 24 it moved for indictment of six witnesses who failed to appear in response to subpoenas.[65]

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[62] When Mr. Hearst decided to appeal his case, the Senate committee asked through a joint resolution (S. J. Res. 234, 74th Cong., 2d sess.) for $10,000 for counsel hire (since the maximum which it could pay was $3,600 per year) to defend its position, but the House turned it down by a vote of 153 to 137. This slap at the committee supposedly was substantially prompted by the fact that it had at one time smeared several House members with suspicion of receiving favor from a lobbyist, and that it had conflicted with the House committee in 1935 over obtaining testimony from H. C. Hopson of the Associated Gas and Electic Co. (The Senate committee, in S. Rp. 1272, 74th Cong , 1st sess., dated Aug. 14, 1935, had gone so far as to recommend that Hopson be brought before the bar of the Senate to show cause why he should not be punished for contempt in refusing to testify. The matter was dropped when Mr. Hopson appeared before the committee the next day.) Also, several Democratic representatives resented the attempt to drag their party into the Senate committee controversy.

[63] Later sentenced to pay $100 fine and serve 30 days in jail, he was released on bond pending appeal.

[64] H. R. 8875 (Pub. 849–74th Cong.), July 13, 1936.

[65] The six, officials of the Railway Audit and Inspection Company, Inc., were on September 21 indicted by a district grand jury. No court action had been taken by the end of February.

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The "Merit System" Again. Of the various proposals embodied in the recently published *Report of the President's Committee on Administrative Management*,[1] that calling for extension of the merit system has received most publicity. This publicity has been generally favorable, and, in the opinion of the present writer, undiscriminating. Everyone agrees that appointments to the public service should be based upon merit of some kind. The pertinent questions are: First, should the sort of merit represented by party service be given any consideration in the public service? Second, assuming that it should not, how is the sort of merit connoted by efficiency in doing the particular job assigned to be secured? Any proposal to extend the merit system which fails to tackle these questions unequivocally is hardly entitled to unqualified support.

The President's Committee passes over the first question entirely. Patronage is dogmatically treated as an unmitigated evil which is not to be trafficked with. Perhaps it is, but one is certainly entitled to ask whether party government, as it has developed in this country, could survive without it. Organization, rather than common principles and policies, is the recognized touchstone of party solidarity today.[2] It would therefore seem incumbent upon advocates of the merit system either to explain how political appointments are to be reconciled with the system or to propose a different basis for parties.[3]

This problem, however, may be put to one side for purposes of the present note. The Committee can hardly be censured for failing to raise the issue in a political document. The most distressing ambiguity in current advocacy of the merit system occurs in connection with the second question mentioned above. This is because there are two radically different ideas as to how efficiency in government is to be secured. One of them places reliance upon legal rules limiting the freedom of administrators in the choice of personnel. The other places faith in strengthening the executive department, on the theory that the conferment of power commensurate with responsibility will call forth its own efficiency response. The significant point to bear in mind here is that these are really mutually exclusive alternatives. It is fatal to the success of either to inject elements proper to the other.

For example, if reliance upon executive responsibility for administration is to be the method followed, a merit system, with all its paraphernalia of centrally concocted tests, must not be allowed to interfere with the complete discretion of administrators in their use of it. In other words,

[1] Washington, Government Printing Office, 1937.

[2] Professor Merriam, among others, has emphasized this aspect of American parties. *American Party System*, rev. ed., New York, 1929), pp. 101–105.

[3] Professor Dimock raises the question, but does not answer it in terms of the American party system. *Modern Politics and Administration* (New York, 1937), p. 297.

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there should be no control over an administrator other than that exerted by his own official superiors. His job must stand hostage for his conduct in choosing subordinates, in the same way, and to the same extent, as his conduct in carrying out any other aspect of his official duties.

It is perfectly clear that the original establishment of the merit system in the federal administration did not observe these conditions. It represented an application of the first theory of civil service as outlined above, rather than the second. By the law of 1883,[4] a Civil Service Commission was set up to act as a non-partisan check upon the freedom of administrators in hiring and firing personnel. In other words, it was assumed that the executive branch was inherently disposed to make "political" appointments, and that the only way to prevent this was to set up a check upon the executive in the shape of an independent civil service administration.

Since 1883, however, a strong movement in favor of strengthening the administrative position of the President has developed. Administrative reorganization now means the integration in the executive of control over all the activities of government. It is therefore obvious that the advocates of administrative reorganization must revise their attitude toward civil service reform. And it would appear reasonable to expect them to repudiate the older idea entirely. Unfortunately, this is not usually done. Instead, an attempt is made to combine the old with the new in order to present an ostensibly unified Civil Service Reform front.[5]

This is substantially the position of the President's Committee. Throughout the report, its members are staunch advocates of presidential power, but they are not above making eloquent appeals to traditional check and balance sentiment in order to get it.[6] Perhaps the resulting confusion of thought produces a salutary atmosphere for favorable Congressional consideration, and, if it went no farther than this, the Committee ought to be congratulated upon achieving a degree of political finesse rare among academicians. But the distinguished consultants seem to have been seduced by their own rhetoric into making serious substantive concessions to the opposition.

Thus, while they propose an establishment, directly under the control of the President, headed by a Civil Service Administrator, as a substitute for the existing Civil Service Commission, they also provide for a Civil

[4] 22 Stat. 403; U.S.C. Compact Ed., Title 5, sec. 632.

[5] The Committee is well aware of the different connotations of "merit system." It even emphasizes that "the original theory of merely protecting appointments from political influence through a legalistic system of civil service administration is inadequate to serve democratic government under modern conditions." *Op. cit.*, p. 7. Apparently, however, "inadequacy" is not inconsistent with application.

[6] *Vide* the solemn references to separation-of-powers doctrine calculated to induce Congress to abolish the pre-audit powers of its own agent, the Comptroller-General.

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Service Board whose members are to enjoy a tenure hedged about with all the familiar devices to secure freedom from executive influence. Not finding anything in particular for this Board to do except advise and recommend, they propose that it should appoint a special board of qualified examiners to *conduct an open competitive examination for the office of Civil Service Administrator. And the President is to be required to choose from the three highest names submitted to him!* In other words, the President is to be legally limited in his choice of this key man who was supposed to be completely subject to his control.

Stranger still, the President's Committee seems to take positive pride in these dubious results as a sort of supreme evidence of its good faith in advocating the merit system. It has a principle to fall back on: The merit system ought (as the text-books have been telling us these many years) to cover all non-policy-forming jobs; the job of the Civil Service Administrator is supposed to be non-policy-forming; ergo, we must see that he is duly tested and certified, let the chips fall where they may.

This type of defense for depriving the Chief Executive of complete freedom of choice in selecting his assistants raises the whole question of the validity of the old saw of the text-books. Certainly there is a good deal of *naïveté* in it; and this is beautifully illustrated in the Committee's explanation of its recommendation. We are told that the President should not be hampered by civil service laws in his selection of policy-forming subordinates, because "in a democracy it is essential that the very highest posts be filled by the Chief Executive with persons who support his program and policies and in whom he has complete confidence."

By implication, lower positions may be filled with persons who do *not* support his program, and in whom he has *not* entire confidence. When stated so baldly, it is clear that this is a false antithesis. Confidence is relative to the job to be performed. The fact that political convictions are irrelevant to the performance of most government jobs means only that they are a factor which a good administrator will naturally disregard in making such selections. In exactly the same way, a good administrator *will* pay attention to political convictions when appointing to the higher posts. It is equally important that confidence of the superior in the inferior shall exist in both cases, and there is no more reason to doubt the competence of the administrator to apply appropriate criteria in the one case than in the other.

The fallacy involved in smug references to policy-making versus policy-executing functions lies in the fact that these are not occupational indices; they are relational qualities. Even the President himself does not make policies *vis à vis* Congress, nor do any of his inferiors make policies *vis à vis* him. On the other hand, all presidential appointees (including, of course, the Administrator of Civil Service) make policies in relation to their own subordinates.

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The conclusion to be drawn from this simple fact is that whatever conditions are to govern the relationship between superior and inferior in the government service should be applied wherever that relationship exists. If we are sincere in our belief that responsibility should be concentrated at the top, then it follows that not only the President's selection of a Civil Service Administrator, but also the selection of every other administrator, should be made free of any compulsion by law.

This means that wherever an administrator, whatever his rank in the administrative hierarchy, fails to observe relevant criteria in selecting personnel, the removing power, and not the courts, should be brought into play. Under no circumstances should it be possible for an officer, charged with selecting personnel, to plead that the latter were forced upon him by some outside agency.

The usefulness of a "merit system" to an integrated administration thus depends upon its being definitely regarded as a service agency placing its resources at the disposal of those who have appointments to make. That this service agency should have the right to compel choice from "the three highest" on a list of successful candidates, or that it should serve as a court of appeal for discharged employees, are propositions which should not be countenanced.

There is reason to suspect that these conclusions will sound hopelessly fantastic to the loyal supporter of civil service reform. Yet there is much in recent experience to confirm them. The New Deal has been roundly condemned for failing to expose its alphabetical innovations to merit laws. Yet the example of the T. V. A. offers a very cogent warning that the indictment is not properly drawn. The New Deal is certainly to be condemned for allowing politics to influence the selection of personnel in many cases, but there is no reason to say that the proper alternative is the classified civil service.

The T. V. A. seems to have made an enviable personnel record, not, indeed, without the benefit of civil service techniques, but without being constrained to accept dictation from an independent civil service authority in the matter of job-filling.[7] In short, the use made of civil service techniques by the T. V. A. is the sort that should be made of them by every agency of government, high or low. If such liberty is abused, there is only one safe remedy, namely, to inculcate in the chief executive a sufficient sense of responsibility to ensure that he will hesitate to turn over any branch of government to machine politicians.

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[7] The annual reports of the Authority for 1934 and 1936 detail the collaboration of the research division of the Civil Service Commission. See also L. J. O'Rourke, "Personnel Aspects of the T. V. A.," *Personnel*, Vol. 10, No. 4, p. 107; E. Francis Brown, "Men of T. V. A.," *Commonwealth*, Vol. 20, No. 18, p. 419.

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Organization of the Executive Branch of the National Government of the United States: Changes between August 1, 1936, and May 31, 1937.[1] As in previous lists, mention is here made only of units specifically authorized by law or established by the President by executive order under general authority vested in him.

Advisory Committee of the Coast Guard Academy. Created by Public No. 38, 75th Congress, approved April 16, 1937, to examine the course of instruction and to advise the Secretary of the Treasury in regard thereto. Committee will consist of five "persons of distinction in the field of education," who shall be appointed by the Secretary of the Treasury and who shall serve without pay, but who shall be reimbursed for actual expenses of travel.

Board of Visitors to the Coast Guard. Created by Public No. 38, 75th Congress, approved April 16, 1937, to "visit the Coast Guard Academy annually on a date to be fixed by the Secretary of the Treasury." The Board will consist of two senators and three members of the House of Representatives to be appointed by the chairmen of the committees of the Senate and the House of Representatives handling legislation pertaining to the Coast Guard Academy. The chairmen of the two committees are to be ex-officio members. The members of the Board receive no compensation, but are to be reimbursed for actual expenses.

Capitol Auditorium Commission. Created by Public No. 6, 75th Congress, approved February 20, 1937, to investigate desirable sites for an auditorium in the city of Washington. Consists of the chairman and the ranking member of the House and Senate committees on public buildings and grounds and the Secretary of the Interior.

Disaster Loan Corporation. Created by Public No. 5, approved February 11, 1937, to make loans because of floods or other catastrophes in 1937. Has a capital stock of $20,000,000, to be furnished by the Reconstruction Finance Corporation, which will appoint its officers and agent.

Interdepartmental Committee to Coördinate Health and Welfare Activities. Formally created by Executive Order No. 7481 of October 27, 1936, to sponsor coöperative working agreements among agencies of the government in the health and welfare field and to study and make recommendations concerning specific aspects of the health and welfare activities of the

[1] In the December, 1933, issue of this REVIEW, pp. 942–955, appeared a tabular review of the changes in major units of the national government between March 4 and November 1, 1933. Supplementary lists have appeared in the following issues: April, 1934: changes between November 1, 1933, and March 15, 1934; October, 1934: changes between March 15 and June 30, 1934; February, 1935: changes between June 30 and December 15, 1934; August, 1935: changes between December 15, 1934, and July 5, 1935; October, 1935: changes between July 5 and August 12, 1935; December, 1935: changes between August 12 and October 15, 1935; June, 1936: changes between October 15, 1935, and April 15, 1936; October, 1936: changes between April 16 and July 31, 1936.

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government. The Committee consists of assistant secretaries of the Treasury, Agriculture, Interior, and Labor Departments, and a member of the Social Security Board. This Committee was established informally in August, 1935, the only announcement being a White House press release.

Joint Committee on Government Organization. Created by Public Resolution No. 4, 75th Congress, approved February 3, 1937. Composed of nine members of the House appointed by the Speaker and nine members of the Senate appointed by the President of the Senate. It is the duty of the Joint Committee to investigate the organization and activities of all agencies of the government and to recommend to the Senate and House of Representatives changes in organization, elimination of agencies, or reduction in personnel. The Joint Committee has held hearings. The testimony has not been published, but it is likely that it will be printed later.

House Resolution No. 60, 75th Congress, adopted January 14, 1936, as amended by House Resolution No. 106 of February 2, created a House Select Committee on Government Organization consisting of nine members. Representative James P. Buchanan was chairman of this committee until his death, when he was succeeded by Representative John J. Cochran. Senate Resolution No. 69, adopted January 29, created a Senate Select Committee on Government Organization, consisting of nine members of which Senator Robinson was chairman. The members of the Senate and House Select Committees are also members of the Joint Committee, but the three committees are separate entities.

Three other committees have been authorized recently for study of problems of reorganization. Senate Resolution No. 217, 74th Congress, adopted February 24, 1936, provided for the appointment of a Senate committee, which is known as the Select Committee to Investigate Executive Agencies of the Government, and of which Senator Byrd is chairman. This committee engaged the Brookings Institution to make a factual study and submit recommendations. House Resolution No. 460, 74th Congress, adopted April 29, 1936, at the suggestion of the President, provided for the creation of a Select Committee on Reorganization, of which Representative Buchanan was chairman. This committee arranged to utilize the work of the Brookings Institution, but as the committee expired at the end of December, at the close of the statutory period of the 74th Congress, it was not able to make use of the Institution's findings.

On March 16, 1936, the President created (without the issuance of an executive order) the "President's Committee on Administrative Management," which operated independently of the other committees. On January 12, 1937, the President transmitted to Congress the report of the

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committee, which dealt in general with the consolidation of independent establishments and other existing agencies in 12 executive departments, but did not allocate the subordinate agencies to the several departments.

The report of the President's Committee on Administrative Management has been issued in the three following forms:

(1) A quarto print (ix, 53 pp.), including the President's message, issued by the Committee under the title *Administrative Management in the Government of the United States.* (2) A quarto print (v, 47 pp.) with the same title as above, but not including the President's message, issued by the Committee; the message was printed in the *Congressional Record* for January 12. (3) An octavo print (84 pp.) issued as Senate Document 8, 75th Congress, 1st session, containing both the message and the report; this may be obtained from the Superintendent of Documents for 10 cents.

Reports by the Brookings Institution to the Senate Select Committee to Investigate Executive Agencies (Byrd Committee) have been issued as "committee prints" and may be obtained from the Superintendent of Documents, Government Printing Office, at the prices given below. These have the main title *Investigation of Executive Agencies of the Government.* Subtitles are as follows:

No. 1. Report on Government Financial Agencies [preliminary print]. 36 pp. 5 cents. (Out of print.) This contains a description of the agencies and recommendations concerning credit-granting agencies. It does not contain recommendations on bank supervisory agencies. A complete (starred) print will be issued.

No. 2. Expansion in Governmental Activity. 19 pp. 5 cents.

No. 3. Report on Government Activities in the Field of Public Supply and Property [including mapping and duplicating of publications]. 32 pp. 5 cents.

No. 4. Report on Government Activities in the Field of Mineral Resources and Power. Pp. 101–135. 5 cents.

No. 5. Financial Administration of the Federal Government. 110 pp. 15 cents.

No. 9. Report on Government Activities in the Promotion of Commerce and Industry. 42 pp. 10 cents.

No. 10. Report on Government Activities in the Regulation of Private Business Enterprises. 107 pp. 10 cents.

No. 13. Government Activities in Library, Information [including publicity, motion pictures, and radio], and Statistical Services. 31 pp. 10 cents.

Reports, which probably may be obtained from the Superintendent of Documents, are being prepared on the following subjects: organization of federal law enforcement activities; government activities in the fields of the public domain, agriculture, and wild life and aquatic resources;

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government activities in the field of transportation; government activities in the field of public welfare; government activities in the field of public works and water resources; and government activities in the field of public personnel.

The report (5 pp.) of the House Select Committee on Reorganization, created April 29, 1936, by House Resolution No. 460, 74th Congress, was issued as House Report No. 4, 75th Congress, 1st session, under the title *Reorganization of Government Departments.*

National Gallery of Art. Created as a bureau of the Smithsonian Institution by Public Resolution No. 14, 75th Congress, approved March 24, 1937, to administer the building and art collection donated to the government by A. W. Mellon. The Gallery will be under the direction of a board consisting of the Chief Justice of the United States, the Secretary of State, the Secretary of the Treasury, the Secretary of the Smithsonian Institution, and five general trustees. The general trustees first appointed are to be chosen by the board of regents of the Smithsonian Institution, subject to the approval of the donor; their terms will expire on July 1 of every alternate year from 1939 to 1947; their successors will be appointed for terms of 10 years by a majority vote of the general trustees. The name of the existing National Gallery of Art of the Smithsonian Institution is changed to the National Collection of Fine Arts; this unit and the Freer Gallery of Art will be continued as heretofore, and will not be a part of the National Gallery of Art.

Resettlement Administration. Recreational demonstration projects transferred to the Secretary of the Interior by Executive Order No. 7496 of November 14, 1936; the direct administration is in the National Park Service. Remaining work of Resettlement Administration transferred to the Department of Agriculture by Executive Order No. 7530 of December 31, 1936; the agency has been continued under the same name as a branch of the Department of Agriculture. By Executive Order No. 7546 of February 1, 1937, six Indian subsistence homestead projects were transferred to the Department of the Interior, where they have been placed under the Office of Indian Affairs.

United States Greater Texas and Pan American Exposition Commission. Created by Public Resolution No. 21, 75th Congress, approved April 9, 1937, to supervise the activities of the United States in connection with an exposition to be held in 1937. The Commission consists of the Vice-President and the Secretaries of State, Agriculture, and Commerce. The resolution provides also for a Commissioner-General, to be appointed by the President by and with the advice and consent of the Senate; he is to serve without compensation, and to him the powers and duties of the Commission may be delegated.

L. F. SCHMECKEBIER.

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The Summer Schools and Other Educational Activities of the British Liberal Party.* The summer school was first adapted for political purposes in Great Britain by the Fabian Society early in the present century.[1] In the period before the World War, the only other political organization that sponsored summer schools—and in this case only intermittently—was the Independent Labor party. The Liberal party, beginning with the establishment of the Liberal Summer School in 1921, was the first major party to take up the idea. Neither the Fabian nor the Liberal summer school was founded as part of the official organization of the respective parent bodies; both, in their inception, were spontaneous movements initiated by enthusiastic members of the rank and file. The Fabian Summer School, however, soon became an integral part of the organization of the Fabian Society, while the Liberal Summer School has remained throughout its existence an auxiliary party organization.

The Liberal Summer School was originated as part of the post-war movement designed to rehabilitate the British Liberal party after its eclipse during the war years. The apparent failure of the many attempts to restore the Liberal party to its former prominent position in British politics should not be allowed to divert attention from the Liberal Summer School as an agency for education and research within a major party. It is impossible here to enter at length upon the causes of the decline of liberalism in the world at large, and especially in Great Britain.[2] It is necessary only to note that many British Liberals sincerely believed, in the years immediately following the World War, that a first essential for the recovery of their party was a general reconsideration and recasting of Liberal policy, in the light of fundamentally changed conditions.[3] It was felt that the main outlines of the traditional Liberal policy had already been realized, especially with the enactment of the social program

* This article is based mainly on research and observation in Great Britain as a follow of the Social Science Research Council. Grateful acknowledgment of the financial assistance received from this source is hereby made.

[1] See Joseph R. Starr, "The Summer Schools and Other Educational Activities of British Socialist Groups," in this REVIEW, Vol. 30, pp. 956–974 (October, 1936).

[2] See H. J. Laski, *The State in Theory and Practice* (New York, Viking Press, 1935).

[3] See the expression of this opinion by two leaders of the summer school movement, as follows: E. D. Simon, "The Liberal Summer School," *Contemporary Review*, Vol. 130, pp. 298–303 (September, 1926), and Vol. 136, pp. 273–279 (September, 1929); Ramsay Muir, "The Latest Liberal Split," London *Nation*, Vol. 40, p. 584 (January 29, 1927), and "The Liberal Summer School and the Problems of Industry," *Contemporary Review*, Vol. 132, pp. 282–289 (September, 1927). See also Hilton Young, "The Disorganization of Liberalism," *ibid.*, Vol. 119, pp. 442–450 (April, 1921); A. G. G., "The Spirit of Liberalism," London *Nation*, Vol. 33, p. 513 (July 21, 1923).

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of the pre-war Liberal cabinet, the statutory limitation of the powers of the House of Lords, the consummation of political democracy in the Representation of the People Act of 1918, the disestablishment of the church in Wales, and the initiation of a hopeful plan for international peace.[4] On the other hand, there was imperative need for the formulation of Liberal policy upon the new and pressing social and economic problems of the post-war era, especially those connected with the industrial life of the nation. A few Liberals who diagnosed the situation in this way were responsible for the foundation of the Liberal Summer School. They perceived that a summer school could be made to serve as a useful agency for reformulating Liberal policy.

It was fitting that the summer school, like another great Liberal movement of the last century, should originate in Manchester. In 1919, a small group of Manchester business and professional men, of whom the leading spirit was E. D. Simon, a manufacturer, became interested in formulating a Liberal policy with reference to the problems of industry. In their many discussions, the members of this group formulated some tentative proposals which were offered as resolutions in the early post-war conferences of the National Liberal Federation, but which were not accepted. After further discussions, Ramsay Muir, then professor of history in the University of Manchester, undertook to express the opinions of the group in a little book, *Liberalism and Industry*.[5] These forward-looking Liberals were, however, aware that their proposals were incomplete and in need of clearer definition; so they considered how they could obtain the assistance of the leading economists and industrialists of the Liberal party.[6] At a small week-end conference held in the spring of 1921 on E. D. Simon's farm in Herefordshire, attended by E. D. Simon, Ramsay Muir, Philip Guedalla, T. F. Tweed, Edward Scott, and a few others, a summer school was decided upon as the best means of stimulating the revival of the party.[7] It was believed that, in a summer school, research for a party policy could be carried on under conditions more conducive to quiet deliberation than in the ordinary political meeting or conference, and that the apathetic mass of the party might be educated to accept progressive ideas. Moreover, it was conceived that a summer school sponsored by

[4] See, as an early analysis to this effect, Harold Spender, "The War and the Parties," *Contemporary Review*, Vol. 113, pp. 135–143 (February, 1918).

[5] See Ramsay Muir, *Liberalism and Industry* (London, Constable, 1920), and especially the preface of the American edition (Boston and New York, Houghton Mifflin, 1921); A. P. Nicholson, *The Real Men in Public Life: Forces and Factors in the State* (London, Collins, 1928), p. 264; E. D. Simon, "The Liberal Summer School," *Contemporary Review*, Vol. 130, pp. 298–303 (September, 1926), at p. 299.

[6] See editorial comment in the *Manchester Guardian*, August 3, 1923.

[7] See Ramsay Muir's account of the origin of the Liberal Summer School in the *Weekly Westminster*, August 2, 1924.

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persons not formally connected with the official party organization would be unhampered by the timidity and caution characteristic of an established institution. It might be expected to proceed more boldly, and to propose the radical solutions that the circumstances seemed to demand. This small group of Liberals accordingly decided to sponsor a summer school to meet in 1921. They reserved the accommodations of a hotel at Grasmere, a resort in the lake district, for the last week of September, and invited about a hundred of the younger Liberals to meet there for discussion.

The first Liberal Summer School was in session at Grasmere, September 26–30, 1921.[8] It was attended by about 70 persons from many walks of life. Not a single leader, or member of Parliament, or paid official of the Liberal party was present. No attempt had been made to fill the program with set lectures and papers. At each plenary session of the school, one person was designated to open the discussion and to sum up at the close. Smaller groups met at odd moments to continue the discussions. The dominant interest of the school was the same as that of the Manchester group—to discover a Liberal industrial policy. The school did not, however, succeed in formulating such a policy; the discussions served rather to reveal the sharp differences of opinion that existed within the Liberal party at that time. But there was general agreement on the value of the summer school as a method of realizing the common aim of the group, and a desire to arrange matters so that the discussions might, in future years, influence a larger number of members of the party. It was accordingly decided that the Liberal Summer School should become a permanent institution, and that it should be held each year in a convenient location, and organized in such a way that it might be attended by hundreds of Liberals. This desire for a large attendance, and the further decision that the Liberal Summer School should be held alternately in Oxford and Cambridge, reveal that the founders had in mind as their model the University Extension summer meetings, rather than the Fabian Summer School. The members of the first Liberal Summer School chose an executive committee, which was charged with responsibility for planning the subsequent meetings.

In 1922, the Liberal Summer School assumed in most respects the form that it has since retained.[9] In that year, the sponsors of the school in-

[8] Accounts of the first Liberal Summer School were written by special correspondents, who attended the meetings, of the *London Times* (issues of September 2, 26, and 28, 1921) and of the *Manchester Guardian* (issues of September 28, 30, and October 1, 1921). Philip Guedalla's recollections of the school may be found in the *Weekly Westminster*, August 2, 1924.

[9] On the 1922 session, see the *Federation News* (organ of the Women's National Liberal Federation), No. 13 (March, 1922); *London Times*, March 10, August 2, 3, 5, 10, 1922; *Manchester Guardian*, August 1, 2, 5, 7, 8, 9, 1922; *Liberal Magazine*,

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augurated the practice of holding the meetings in either Oxford or Cambridge, with the dates selected so as to include the August bank holiday. This plan resulted in a much larger attendance, as about 600 persons were present at the school at Oxford, August 1–9, 1922. The summer school movement received the blessing of Lord Oxford, who, as Mr. Asquith, was then leader of the Liberal party. Lord Oxford gave the opening address at the first evening session, and praised the summer school as an experiment which might prove an important factor in the revival of the Liberal party. Since 1922, the committee of the Liberal Summer School has made it a regular practice to obtain a prominent party leader to open the program of each annual meeting. The practice was also inaugurated in 1922 of transforming the last session of the school into a public meeting for propagandist purposes, with a prominent politician as the speaker. A large hall is obtained for the purpose, and on some occasions as many as 3,000 persons have attended these rallies. Propagandist meetings have not, however, been held in connection with all the sessions of the Liberal Summer School, especially those following the disappointment of the party in the election of 1929.

The relatively long session of 1922 was solidly filled with lectures and papers, given by Liberal politicians and college professors. There were two sessions daily except Sunday, one in the morning and one in the evening. Two papers or lectures were heard at the morning session and one in the evening, each being followed by an opportunity to question the speaker. The informal and extensive discussions of political and economic subjects by the rank and file of the school, as had occurred the previous year at Grasmere, were not duplicated at Oxford in 1922. Observers of the Oxford school recorded that the questioning of speakers was desultory, and that a spirited discussion followed only one paper—that of W. T. Layton. The Liberal Summer School thus took shape at this early date as an institution designed to give an opportunity to the relatively few active, thinking, and articulate members of the party to air their opinions for the edification and inspiration of a large assembly of party members.

The program of the 1922 school was not, as in the previous year, limited to industrial subjects. The papers and lectures now covered a wide range of subjects—foreign policy, the League of Nations, armaments, international finance, mandates and national minorities, Egypt, India, national finance, wage policy and practices, public ownership, the mining industry, and the machinery of government. This catholicity of interests has been characteristic of all subsequent Liberal Summer Schools, except that of 1927, which returned to the original theme of industrial policy.

Vol. 30, pp. 230–231, 454–461, 577–616 (April, July, September, 1922); *Weekly Westminster*, August 2, 1924; E. D. Simon, "The Liberal Summer School," *Contemporary Review*, Vol. 130, pp. 298–303 (September, 1926), at pp. 299–300.

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A number of the papers and lectures of the 1922 school were collected and published as an inexpensive volume.[10]

In the 1923 school, held at Cambridge, August 2–9, a plan was initiated to encourage more general participation in the discussions of the topics dealt with in the lectures and papers.[11] Two large committee rooms were provided, in each of which the interested members of the school could assemble late in the afternoon to question the author of one of the papers read in the morning session, and to engage in an informal discussion of the subject of the paper. This plan met with high approval at the time, and similar afternoon discussions have been a regular part of the programs of all subsequent schools. These discussions have made it possible for the more enthusiastic members to take a direct part in the work of the school. The fundamental character of the school as an agency for the expression of the ideas of a relatively small number of Liberal thinkers has, however, not been changed.

The Liberal Summer School of 1924, held at Oxford, July 30–August 6, exhibited no unusual features in program or administrative arrangements, but was regarded by many friends of the movement as the most successful session up to that time.[12] An innovation at the 1925 school, held at Cambridge, July 29–August 5, was the appearance of some foreign liberals on the program.[13] In 1928, the usual program of lectures and papers was varied by holding debates on three successive evenings.[14] These debates

[10] *Essays in Liberalism* (London, Collings, 1922).

[11] On the 1923 session, see *London Times*, June 12, August 4, 9, 10, 1923; *Manchester Guardian*, August 3, 4, 6, 8, 10, 1923; Barbara Bliss, "The Liberal Summer School," *Federation News*, No. 28 (October, 1923); London *Nation*, Vol. 33, pp. 590–592, 597–612 (August 11, 1923); *Liberal Magazine*, Vol. 31, pp. 534–535 (September, 1923), Vol. 32, p. 414 (July, 1924). In 1923, the *Daily News* began to publish some of the most important papers read at the summer school as pamphlets in what was called "The New Way Series." In the next four years, fifteen pamphlets on a variety of subjects were published.

[12] On the 1924 session, see *London Times*, May 13, July 31, August 1, 2, 4, 5, 7, 1924; *Manchester Guardian*, July 30, 31, August 1, 2, 4, 5, 6, 7, 1924; *Weekly Westminster*, July 26, August 9, 1924; London *Nation*, Vol. 35, p. 580 (August 9, 1924); *Liberal Magazine*, Vol. 32, p. 521 (September, 1924).

[13] On the 1925 session, see *London Times*, July 30, 31, August 1, 3, 4, 5, 6, 1925; *Manchester Guardian*, July 29, 30, 31, August 1, 3, 4, 5, 1925; *Weekly Westminster*, August 8, 1925; *Liberal Magazine*, Vol. 33, p. 540 (September, 1925). On the 1926 session, see *London Times*, April 3, June 15, July 9, 24, 26, 27, 29, 30, 31, 1926; *Manchester Guardian*, July 24, 26, 27, 28, 29, 30, 31, 1926; *Westminster Gazette*, July 31, 1926; London *Nation*, Vol. 39, pp. 434–435 (July 17, 1926); *Liberal Magazine*, Vol. 34, pp. 463–466, 520–523 (August, September, 1926). On the 1927 session, see *London Times*, March 29, June 29, July 29, August 1, 2, 3, 4, 5, 1927; *Manchester Guardian*, July 29, 30, August 1, 2, 3, 5, 1927; *Liberal Magazine*, Vol. 35, p. 445 (July, 1927); *Liberal Women's News*, No. 68 (September, 1927); *New Statesman*, Vol. 29, p. 500 (July 30, 1927).

[14] On the 1928 session, see *London Times*, August 6, 7, 8, 9, 10, 1928; *Manchester Guardian*, August 2, 3, 4, 6, 7, 8, 9, 10, 1928.

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were significant also in that they marked the first appearance of Socialists and Conservatives as speakers at a Liberal Summer School. The committee of the Liberal Summer School has never been narrowly partisan in choosing speakers to appear on the programs. Liberals and Conservatives have also served from time to time as speakers at the summer schools of the Fabian Society and the Independent Labor party. The interchange of speakers indicates that the political summer schools, if they have not succeeded in attaining a truly academic attitude, have at least avoided the excesses of partisanship.

The Liberal Summer School has continued to meet regularly in August of each year at Oxford or Cambridge. The attendance at each school increased steadily down to 1928, except in 1926, when a conflict with another large assembly in Oxford made it necessary to hold the school a week earlier than usual. The attendance at two or three of the summer schools preceding the Liberal disappointment in the election of 1929 was about 1,000. Since 1929, as part of the general decline of the Liberal party, the summer school has lost in popularity, until in some years hardly more than 100 persons have been in attendance. It appears that a nucleus of members have attended regularly each year from the beginning, but a number of observers have from time to time recorded that more than half of the membership of each school has been made up of newcomers.

The members of the Liberal Summer School pay their own expenses, and also contribute to the expenses of the school by paying a registration fee of ten shillings each. The expenses of the school consist of rent, postage, printing, and similar items. No speaker at a Liberal Summer School has ever been paid a fee, nor even his expenses. A limited number of scholarships have from time to time been provided, to make possible the attendance of able persons of limited means. The announcements of the schools often state that many local Liberal Associations and Liberal Federations have arranged to grant scholarships on a competitive basis. Similar awards of scholarships have been made by certain newspapers, especially the *News Chronicle* and the Starmer group of papers. During Ramsay Muir's brief editorship of the *Weekly Westminster* (November 3, 1923–January 30, 1926), that paper sponsored a scholarship fund, subscribed by well-to-do friends of the Liberal Summer School.[15] Awards were made to the winners of an essay-writing contest. In 1927, the National League of Young Liberals collected a fund, and awarded scholarships in a similar manner.[16] The scholarships usually have the value of £5, with smaller consolation prizes for the runners-up.

[15] *Weekly Westminster*, May 17, 24, 31, July 19, 1924; May 23, 30, June 6, July 18, 1925.

[16] See *Forward View* (organ of the National League of Young Liberals), Vol. 1, No. 5 (May, 1927).

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Recreational and social activities do not occupy as large a place in the programs of the summer schools of the Liberal party as in those of the Socialist groups. The recreational side of the first Liberal Summer School at Grasmere was not organized in any formal way. Some of the discussions were held in the open air, and in other ways the members of the school enjoyed the amenities of the countryside. Beginning with the 1922 school, the afternoons have been left free for recreational purposes. Dances, teas, garden parties, and excursions to near-by points of interest are organized, and facilities are provided for boating, tennis, and other sports. After the address on the last evening of the school, the younger members usually present a political skit or revue in which leading figures and recent events in the political world are burlesqued.

The Liberal Summer School has never been hampered by a rigid organization. As E. D. Simon has said, it has no constitution—not even an unwritten one.[17] A program committee, which is structurally a subcommittee of the council of the Liberal Summer School, is appointed for each session.[18] The executive committee, chosen at the first Liberal Summer School, has served continuously since that time without reëlection. The only change has been the coöption of other Liberals to form a larger and more representative council. The absence of formal connection between the summer school and the official organization of the party has often been emphasized. It is true that at the beginning the summer school group included no member of Parliament, nor any person connected with the central party organization.[19] As the years passed, the connection between the summer school and the party organization became much closer. The frequent appearance of party leaders as speakers at the summer school was evidence of this. When Ramsay Muir was appointed secretary of the Liberal Central Office (1929), and when he was later elected to the chairmanship of the National Liberal Federation (1931), there was at least a personal connection between the summer school and the official party organization. The relationship became closest in 1928, when the summer school group was received enthusiastically into the bosom of the party and allowed to dictate the official party policy.[20]

The success of such an undertaking as the Liberal Summer School always depends largely upon the work of the general secretary. This office was held until 1927 by T. F. Tweed, who was at the same time the organizing secretary of the Manchester Liberal Federation, and during this time the office of the Liberal Summer School was maintained in Man-

[17] E. D. Simon, "The Liberal Summer School," *Contemporary Review*, Vol. 136, pp. 273–279 (September, 1929), at p. 279.

[18] See the annual announcements of the sessions and Ramsay Muir's account of how the programs are constructed, *Weekly Westminster*, August 9, 1924.

[19] *Weekly Westminster*, August 2, 1924.

[20] See editorial comment on the relation between the summer school and the party, *Manchester Guardian*, August 2, 1928.

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chester. Since 1927, the general secretary has been Miss Sydney Brown, and the office has been maintained in London.[21]

The Liberal Summer School, as the name implies, is an educational agency of the Liberal party. It has been employed only incidentally as a means of obtaining new recruits for the party. The vast majority of the persons who attend its sessions are already convinced Liberals. They are preponderantly middle-class persons of some means, ranking well above the average in intelligence and formal education. There can be no doubt that most of the persons who attend the Liberal Summer School have a real desire for reflection and study. They have a serious interest in obtaining instruction upon current social, economic, and political problems, and the Liberal attitude towards them. A settled tradition exists that the speakers at the summer school shall discuss their subjects in an academic manner, and shall carefully avoid the catch phrases and emotional appeals so characteristic of the ordinary political speech.[22] All told, the Liberal Summer School is really a school, and a considerable part of the more active adherents of the party have received instruction in its sessions.

While important to the Liberal party as an educational agency, the summer school has, however, rendered more valuable services as an institution for research. Its most valuable service in this connection has doubtless been the provision of a forum where individuals may contribute the results of their researches, but its stimulation and sponsorship of coöperative research have also been of special significance. Some of the papers read at early sessions of the school were the result of long discussion and research by the executive committee of the summer school, after which the writing and presentation of the paper was entrusted to one member.[23] In 1924, a permanent research department was set up in connection with the summer school.[24] Throughout its two years of existence

[21] *London Times*, March 29, 1927.

[22] See the records of the 1924 session for comments on the late C. F. G. Masterman's departure from the "summer school manner" in his speech on "Unemployment and Security of Livelihood."

[23] See the remarks of Ramsay Muir in the *Weekly Westminster*, August 2 and 9, 1924. Probably the most important papers of this class were the following, which were presented as part of the 1923 program: Sir William Beveridge, "Insurance for All and Everything," *New Way Series*, No. 7; A. D. McNair, "The Problem of the Coal Mines," *ibid.*, No. 8. It has been repeatedly claimed that the former of these papers influenced the policy of the Conservative government of 1924, and that the latter was the germ of the report of the royal commission on the coal industry in 1926; see Ramsay Muir, *Weekly Westminster*, August 2, 1924, and "The Liberal Summer School and the Problems of Industry," *Contemporary Review*, Vol. 132, pp. 282–289 (September, 1927); E. D. Simon, "The Liberal Summer School," *ibid.*, Vol. 130, pp. 298–303 (September, 1926); and editorial comment in the London *Nation*, Vol. 39, pp. 434–435.

[24] *Weekly Westminster*, August 2, 1924; E. D. Simon, "The Liberal Summer School," *Contemporary Review*, Vol. 136, pp. 273–279 (September, 1929), at p. 274;

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this agency was handicapped financially, and it accomplished little or nothing. Its chief activity was the conduct of what was known at the time as the "National Liberal Inquiry," which was intended as a research project to discover the trend of Liberal thought on the questions of the day, and as a kind of extension course connected with the summer school. The research department began by preparing questionnaires on a number of current problems, and these were circulated widely to Liberal organizations all over the country.[25] It was intended that the replies received from each of these questionnaires should be examined carefully by an expert committee, and that the committee's report should be a formulation of Liberal policy on that subject. The scheme was not successful, and no report of any value resulted.[26]

In the meantime, another Liberal research project had been carried to completion. This was the inquiry into the condition of the coal industry, which resulted in the publication of the report, *Coal and Power*.[27] This investigation was sponsored and financed by David Lloyd George after his re-entry into the Liberal party in 1923. The summer school group had no formal connection with this project, although some of its members served on the committee that Lloyd George assembled about him. The committee had the assistance of numerous experts, who visited the coal fields in Great Britain, France, and Germany and submitted recommendations and memoranda. After discussion, these were embodied in the report of the committee. The committee rejected the miners' proposal for state socialism in the coal industry, and recommended instead the nationalization of the ownership of the mines with a continuance of the existing management under the supervision of a non-political commission. The committee's recommendations for a more general use of electrical power were an early influence leading to the great advances in electrification that have since been made. At the time of its publication, this report was labelled as a Lloyd George scheme, and was received

Liberal Year-Book (1925 and 1926); *Forward View*, Vol. 3, No. 32 (September, 1929).

[25] The subjects of the questionnaires were the drink problem, trade-union policy, inheritance, fair wages and family allowances, population problems, and the organization of industry. See the *Liberal Magazine*, Vol. 33, pp. 584–585, 625–627, 695–696, 755–757 (October, November, December, 1925); Vol. 34, pp. 57–58 (January, 1926); *Liberal Women's News*, No. 47 (October, 1925), No. 48 (November, 1925), No. 51 (February, 1926); *Weekly Westminster*, August 8, October 3, 17, and all issues until the last of this paper (January 30, 1926).

[26] See a summary of the results of the first questionnaire in the *London Times*, July 13, 1926. At least two of the papers read at the 1926 session of the Liberal Summer School—that of Lord Meston on the drink trade and that of H. D. Henderson on inheritance taxes—utilized the results of these inquiries.

[27] *Coal and Power: The Report of an Enquiry Presided Over by the Right Hon. D. Lloyd George* (London, Hodder and Stoughton, 1924).

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coldly by the official party organization. Its main proposals were not adopted as official Liberal policy until over a year later, in 1925.[28]

Still drawing upon the famous fund that had come under his personal control after the dissolution of the war-time coalition, Lloyd George speedily set up another committee. The subject of the second inquiry was the agricultural industry, and the whole problem of the utilization of the land in both rural and urban areas. This investigation resulted in the publication of a two-volume report, *The Land and the Nation* and *Towns and the Land*.[29] Again, the summer school group had no formal connection with the work. This elaborate report does not lend itself to summary. Its most striking features were the recommendation that the state should assume the overlordship of cultivable land, dispossessing the landlords and letting out the land on a basis of "cultivating tenure," while requiring the tenants to pay annuities to the former owners; and its trenchant attack upon the slum conditions of the cities. Early in 1926, shortly after the publication of this report, the executive committee of the National Liberal Federation submitted policy resolutions embodying the main proposals, first to the Liberal and Radical Candidates Association, and later to a special conference in which all important Liberal organizations were represented. These organizations modified the proposals to admit of a variety of tenures for land taken over by the state.[30] Modified in this way, the proposals of the Lloyd George land committee were adopted by the regular conference of the National Liberal Federation in 1926, and became the official policy of the party.[31]

The two research movements within the Liberal party—the Liberal Summer School and the well-financed projects of Lloyd George—were brought together for united action in 1926 in the "Liberal Industrial Inquiry." The special talents of the semi-academic summer school group, which had for some years been studying the problems of industry, and the brilliant leadership of Lloyd George were thus unified in the service of party and state. From the fund at his disposal, Lloyd George placed a considerable sum on deposit for the Liberal Summer School to finance an extended study of the condition of British industry. The executive com-

[28] Ramsay Muir, "The Liberal Party," *Contemporary Review*, Vol. 130, pp. 6–13 (July, 1926), at p. 9; National Liberal Federation, *Proceedings in Connection with the 43rd Annual Meeting . . . 1926*, pp. 14–15.

[29] *The Land and the Nation: Rural Report of the Liberal Land Committee, 1923–1925* (London, Hodder and Stoughton, 1925); *Towns and the Land: Urban Report of the Liberal Land Committee, 1923–1925* (London, Hodder and Stoughton, 1925).

[30] National Liberal Federation, *Proceedings in Connection with the 43rd Annual Meeting . . . 1926*, pp. 11–12.

[31] *Ibid.*, pp. 43–47; *Land Policy Proposals as Adopted at the Liberal Conference Held in the Kingsway Hall, London . . . February 17th, 18th, and 19th, 1926* (London, Liberal Publication Department, 1926).

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mittee of the Liberal Summer School took full charge and selected an executive committee of the Liberal Industrial Inquiry, which in turn invited other persons to serve on sub-committees and employed a staff of experts. The persons who took the leadership in the Liberal Industrial Inquiry were those who had been prominent from the first in the Liberal Summer School, but they now found themselves associated with the principal parliamentary leaders of the party.

The executive committee of the Liberal Industrial Inquiry began its work by dividing up the broad field of research, placing each section in charge of a sub-committee. Sub-committees were created on the following subjects: general survey of the industrial situation, functions of the state in relation to industry, industrial and financial organization, trade-unions, wages and the status of the worker in industry, and unemployment. These subjects indicate the extraordinary breadth of the inquiry. The sub-committees were provided with adequate secretarial services, and with a staff of experts of about a half-dozen members. To obtain the factual information for their study, the committee members supplemented their own knowledge and experience by holding many semi-public hearings, to which persons were invited regardless of party affiliation, and studied innumerable reports and memoranda submitted by their own experts. The findings and recommendations of all the sub-committees were later submitted to the general executive committee, and thoroughly discussed and coördinated by it.[32] The final result was the comprehensive report published as *Britain's Industrial Future,* commonly known as the "Yellow Book."[33]

This report was a realization of the original purpose of the summer school movement. It was a detailed formulation of Liberal policy on a broad range of social and economic subjects. Its many proposals included schemes for a Board of National Investment to plan the uses of the national savings, an economic advisory staff for the cabinet, legislation to secure a more equitable distribution of the earnings of industry, the representation of workers in the control of industry, and an ambitious program of public works and national development as a cure for unemployment. Throughout March, 1928, these proposals were discussed in a dozen regional conferences of the National Liberal Federation, and received general approval.[34] Later, a series of resolutions, expressing the

[32] On the administrative organization and procedure of the Liberal Industrial Inquiry, see the preface to its report; Ramsay Muir, "The Liberal Summer School and the Problems of Industry," *Contemporary Review,* Vol. 132, pp. 282–289 (September, 1927), at p. 287; *London Times,* January 29, 1927.

[33] *Britain's Industrial Future: Being the Report of the Liberal Industrial Inquiry* (London, Benn, 1928).

[34] Ramsay Muir, "Liberalism and Industry," *Contemporary Review,* Vol. 133, pp. 555–563 (May, 1928).

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principal recommendations of the Liberal Industrial Inquiry, were enthusiastically endorsed by a special conference of the National Liberal Federation, which was attended by some 2,000 delegates representing Liberal organizations all over the country.[35] The report thus became the official policy of the party. In this event, the Liberal Summer School reached the zenith of achievement and influence within the Liberal party. From humble beginnings, the summer school group had now reached a position of intellectual leadership, and its members were accepted as the prophets of the party. They had endowed the party with a platform relating to economic questions.

The prospects of the Liberal party before the election of 1929 did indeed seem bright. Equipped with a rejuvenated organization and a new policy, and generously financed from the Lloyd George fund, it seemed that the party had real chances of persuading the electorate to adopt a middle way. It was not supposed, of course, that many voters would read the 500 pages of the Yellow Book, and, convinced of its soundness, hasten into the Liberal ranks. To encourage wider popular knowledge of the volume, abridged editions of it were prepared,[36] and the Liberal election literature of 1929 contained frequent references to it and extracts from it. The Liberal election pledge, *We Can Conquer Unemployment*,[37] was put forward as a supplement to the Yellow Book and as an application of its general principles to specific proposals. The portion of the Yellow Book selected for campaign purposes was the recommendations for liberal spending on public works and national development. It was proposed to spend large sums on road-building, housing, telephone and electrical development, land drainage, and other projects; but the most startling feature of the scheme was that all this was not to add one penny to national or local taxation. Whether out of suspicion of the financial aspects of the scheme, or from general disbelief in the efficacy of a public works program as a cure for unemployment, or for some other reason, it

[35] National Liberal Federation, *Industrial Policy Proposals Adopted at the Kingsway Hall, Kingsway, London, W. C., on March 27th, 28th, and 29th, 1928* (London, 1928).

[36] J. Stuart Hodgson, *The Liberal Policy for Industry: A Shorter Version of "Britain's Industrial Future," The Report of the Liberal Industrial Inquiry* (London, Benn, 1928); *Fifty Points from the Liberal Industrial Report* (London, reprinted from the *Daily News and Westminster Gazette*, 1928).

[37] *We Can Conquer Unemployment: Mr. Lloyd George's Pledge* (London, Cassell, 1929). For favorable comment on this election pledge, see J. M. Keynes and H. D. Henderson, *Can Lloyd George Do It?: An Examination of the Liberal Pledge* (London, Nation and Athenaeum, 1929). See also *How to Conquer Unemployment: Labor's Reply to Lloyd George* (London, The Labor Party, 1929). The Conservative government issued a reply to the Liberal proposals in a white paper with the title, "Memoranda on Certain Proposals Relating to Unemployment" (Pp. 54, Cmd. 3331), of which an extended summary is given in the *London Times*, May 13, 1929.

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is a matter of history that the British electorate refused to put its trust in Lloyd George and the Liberal party. The election of 1929 was a great disappointment to the Liberals, and perhaps most of all to the summer school leaders who had spent so many years in research for a party program, only to have it rejected emphatically by the voters.

Little is to be gained by attempting to re-argue the *pros* and *cons* of the Liberal proposals as put forward in the election of 1929. The many obvious similarities between them and President Franklin D. Roosevelt's New Deal suggest that the real test of the soundness of the Liberal scheme is being made in this country. At any rate, the Liberals remained convinced of the value of their plans, and tried to force them upon the second Labor government.[38] In more recent years, the fissiparous tendencies of the Liberal party and other factors have resulted in the further decline of Liberalism in Great Britain, and the Liberal proposals have steadily receded into the background.

It may be argued that the fate of the Liberal party in the election of 1929 proves that research by a political party is a delusion, and that any political party that places itself in the hands of intellectuals is doomed to electoral defeat. This, however, may not be a correct interpretation of these events. It may merely be true that the heroic efforts of the Liberal Summer School to elaborate a policy were not sufficient to counteract the many other forces which were, at the same time, making for the decline of Liberalism. The results of political research cannot be measured solely in terms of electoral success. Many of the Liberal proposals put forward since the World War have been adopted and carried into effect by other parties. They have influenced both the Conservative and Labor parties, and they have attracted the attention of progressive thinkers and organizations in other lands. It is often the thankless task of opposition, or "third," parties to furnish ideas to their political opponents.

One thing is, however, clear. The results of research, such as that carried on by the Liberal Summer School, are not for popular consumption. A vast electorate cannot be appealed to on such a plane. Political research cannot ever be cloistered, completely removed from the influences of the arena of conflict. The Liberal research agencies always kept up realistic contacts with the world of active politics; yet their reports have certainly not been suited for use as campaign documents. It is necessary to simplify, to explain, to translate into tabloid form. The Liberal experience suggests that they—even under the leadership of as clever a politician as Lloyd George—did not succeed in developing the right techniques for the purpose. It suggests, indeed, that new political techniques are needed, such as have not yet been developed anywhere.

[38] *How to Tackle Unemployment: The Liberal Plans as Laid before the Government and the Nation* (London, 1930).

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Not much more needs to be said about the Liberal Summer School. It reached the climax of its development in 1929, and since that date it has declined along with the party itself. Its sessions have been held regularly each year, and it is still the focal point of intellectual inquiry within the party. Some attempts have been made in recent years to make it the rallying point for all persons of progressive sentiments regardless of party; to make it, in other words, the nucleus of a new center party. This is not the only effort to create a united front of the center of British politics, and, like the others, it does not seem to have attained much success. The effort is significant chiefly because it shows that the summer school group is maintaining its organization and ideals in the face of adversity, and that, should conditions change in the future and seem to make possible a Liberal revival, the summer school may be expected to play a rôle of first importance.

After the initial successes of the Liberal Summer School, a number of local summer schools and week-end schools sprang up in different parts of England, Scotland, and Wales in imitation of the national school. Probably the first of the local Liberal summer schools were organized in 1924, when no less than eight were held.[39] Of the many local summer schools, the Scottish Liberal Summer School, the Welsh Liberal Summer School,[40] and those sponsored by the Liberal Associations of Manchester[41] and Birmingham[42] have become permanent institutions, holding sessions regularly each year. The annual session of the Scottish Liberal Summer School is held during three days in June or September, in one of the large centers of population.[43] It is administered by a council that is representative of the Scottish Liberal Federation, Liberal clubs, the women's and young people's auxiliaries, and other organizations. The programs are similar, in general plan, to those of the national school, except that as many as six lectures or papers may be given in one day. The programs reveal a broad interest in the leading subjects of political controversy. The opening address is usually delivered by a prominent politician, and the Friday evening session is transformed into a public meeting and held in a large hall. Social hours and a public reception are regular features of

[39] See the remarks of Ramsay Muir in the *Weekly Westminster*, August 9, 1924, and of E. D. Simon at the 1924 session of the Liberal Summer School, as reported in the *Manchester Guardian*, July 31, 1924.

[40] On the early sessions of the Welsh Liberal Summer School, see the *Weekly Westminster*, April 26, 1924, and November 7, 1925.

[41] The writer was given information on the educational work centering in Manchester by the secretary of the Lancashire, Cheshire, and Northwestern Liberal Federation.

[42] *Forward View*, Vol. 2, No. 23 (November, 1928); Vol. 3, No. 33 (October, 1929); Vol. 4, No. 46 (November, 1930).

[43] The writer was given information on the Scottish Liberal Summer School by its secretary.

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the programs. The average attendance at the Scottish Liberal Summer School has been about 100, each person contributing five shillings to the support of the school.

The local summer schools differ from the national school in two important respects. In the first place, the local schools are sponsored by the regular party organizations. They are in no way the result of a spontaneous and popular movement within the party. In the second place, the crowded nature of their programs leaves little or no opportunity for discussion or any other kind of participation by the persons in attendance. The local schools are thus exclusively educational institutions, and do not supplement the research activities of the national school.[44] The local schools are primarily training centers for persons who take active part, as speakers and canvassers, in the local campaigns.

In addition to the summer schools, the educational activities of the Liberal party and its affiliated organizations consist for the most part of speakers' training classes, study circles, week-end schools and one-day political schools held during the winter months, and series of lectures on political subjects. Like the summer schools, these other educational activities are, as far as can be determined, developments of the post-war period. As in the other political parties, they were the result of the conviction that new techniques were needed to reach the masses, under the conditions of a greatly expanded electorate and the dominance of economic issues in politics.

In March, 1924, a Liberal Speakers' Training Association was formed.[45] This organization, in close coöperation with the central headquarters of the Liberal party, has regularly offered speakers' training courses in London, and has assisted with the provision of similar training in other centers. The primary object of these classes is to provide training in the art of political speaking, but there is also a good deal of instruction designed to provide the participants with matter for their speeches. The Women's National Liberal Federation has sent many of its members into these classes, but it has also frequently organized its own speakers' classes.[46]

In February, 1923, the Liberal Study Circles Union was set up as a branch of the Liberal Publication Department.[47] The records of this

[44] But a political school in Liverpool during the winter of 1930–31 prepared a report on immigration and unemployment.

[45] *Weekly Westminster*, August 2, 1924.

[46] *Federation News*, Nos. 28 and 29 (October, November, 1923); *Liberal Women's News*, Nos. 34, 37, 42, 48 (May, October, 1924; March, November, 1925). The writer was given information on the educational activities of the Women's National Liberal Federation by its secretary.

[47] National Liberal Federation, *Proceedings in Connection with the 40th Annual Meeting . . . , 1923*, p. 15; *Ibid.* (1924), p. 14; *Weekly Westminster*, November 17, December 22, 1923; November 15, December 13, 1924. The writer was given information on the activities of the Liberal Study Circles Union by its secretary.

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organization soon showed that several hundred study circles were meeting regularly in all parts of the country. The secretary selects inexpensive books suitable for study by informal groups of voters, prepares a syllabus for each, and furnishes advice on how to organize and conduct study circles. The initiative in the organization of a study circle is usually taken by some enthusiast, who collects together a few interested persons, and then requests the central office to provide the printed material. Ramsay Muir's books, the "New Way" pamphlets, and the series of Liberal reports have been favorite material for the study circles. A study circle usually meets fortnightly, in the homes of the members. Each meeting is devoted to the discussion of a portion of the book being read. The Women's National Liberal Federation and the National League of Young Liberals have done much, through their publications and organizations, to popularize the study circle as a political activity, and have furnished the membership of many.[48] In 1925, the Liberal Publication Department began to provide a circulating library, in the form of book boxes, for the use of the study circles.[49]

Many Liberal organizations offer lecture courses during the winter months. Each year one or more series of lectures on political subjects is offered in London, sponsored by the political committee of the National Liberal Club, the council of the Liberal Summer School, the Liberal Candidates Association, or some other body. Similar courses are often given in other large centers, such as Manchester and Birmingham. One of the most successful of these lecture courses is the Merseyside Liberal School, founded in 1924, which meets fortnightly during the winter months in the Reform Club, Liverpool. It is in the nature of a combined lecture course and study circle, as provision is made for participation by the audience. During the winter of 1927–28, the National Liberal Federation sponsored fifteen lecture courses in various parts of the country for the purpose of training party agents for service during the election of 1929. Over 500 persons enrolled for the training, and over 100 passed the examination which terminated the course, thus qualifying for employment as agents.[50]

[48] *Federation News*, Nos. 23 and 24 (March, April, 1923); *Liberal Women's News*, No. 37 (October, 1924); Elliott Dodds, "Our Job," *Forward View*, Vol. 1, No. 2 (February, 1927); F. C. Thornborough, "The Young Liberal Movement Since the War," *ibid.*, No. 4 (April, 1927). During the winter of 1926–27, study circles were reported in four branches of the National League of Young Liberals; in 1927–28, nine branches; in 1928–29, fourteen branches; in 1929–30, eight branches; in 1930–31, four branches. See the *Forward View*, *passim*. In addition, a number of branches conducted speakers' classes.

[49] National Liberal Federation, *Proceedings in Connection with the 42nd Annual Meeting . . . 1925*, p. 12; F. C. Thornborough, as cited, note 48 *supra*.

[50] National Liberal Federation, *Proceedings in Connection with the 45th Annual Meeting . . . 1928*, pp. 97–98.

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Two groups within the National League of Young Liberals have held week-end schools regularly for a number of years. These are the Yorkshire Young Liberals, who held their first week-end school early in 1925,[51] and the Young Liberals of Southeast Lancashire, who followed suit later in the same year.[52] The week-end schools of the Young Liberals are held at some country resort, from Saturday noon to Monday morning. A pleasant outing is combined with a course of lectures on political and economic subjects. The week-end schools are held at a cost of about one pound per person, in addition to the expense of transportation.

The Young Liberals have also been responsible for some research projects. In 1926, the Yorkshire group published a report on Liberal social policy.[53] Since 1927, the National League of Young Liberals has had a research committee, which is structurally a sub-committee of its executive committee. The annual conferences instruct this committee to bring in reports upon specified subjects, and a number of reports have been prepared and published as supplements to the magazine of the organization.[54] The research committee proceeds by dividing up the subject for investigation and assigning each part to one member for special study. Later the committee assembles for one or more week-end conferences. At these conferences, the members of the committee are expected to present the results of their study, and outside experts are invited in for consultation. The report is then prepared and circulated among the persons concerned.

The Liberal party is, of course, indebted to the Socialist groups and the agencies of adult education for suggestions as to the procedures and techniques of political education. The Liberals have not invented any new method of instructing party supporters. They have, however, successfully adapted well-known techniques to their own ends, and they have reached many more persons through their educational efforts than have the Socialist groups. The distinctive contributions of the Liberals in the field of political education have been the adaptation of the summer school to research, as well as educational, purposes for the benefit of a political party, and their exploratory efforts in the use of research materials in political campaigns.

JOSEPH R. STARR.

University of Minnesota.

[51] *Weekly Westminster*, April 25, 1925; *Forward View*, Vol. 1, No. 1 (January, 1927).

[52] *Weekly Westminster*, August 22, 1925; *Manchester Guardian*, August 3, 1925.

[53] *Forward View*, Vol. 1, No. 1 (January, 1927).

[54] See, as early examples, "A Report on Electoral and Constitutional Reform," *Forward View*, Vol. 2, No. 13 (January, 1928); "The Taxation of Inherited Wealth," *ibid.*, No. 14 (February, 1928); "The Housing of the People," *ibid.*, No. 15 (March, 1928); and a report on the reform of local government, *ibid.*, Vol. 3, No. 27 (March, 1929).

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The thirty-third annual meeting of the American Political Science Association will be held at the Bellevue-Stratford Hotel, Philadelphia, on Monday, Tuesday, and Wednesday, December 27 to 29 inclusive. By earlier decision of the Association, predominant attention will be given at this meeting to the Constitution of the United States, in recognition of the sesquicentennial of the Convention of 1787. However, round tables for the morning periods will provide the usual variety of topics for members whose primary interests lie in other fields of political science. These round tables, with their leaders, will be as follows: (1) "The Future of the Federal System," W. B. Graves, Temple University; (2) "Political Trends in Europe," C. B. Robson, University of North Carolina; (3) "Training for the Public Service," D. G. Stone, Public Administration Service; (4) "The Far East," J. R. Hayden, University of Michigan; (5) "Changing the Constitution," W. F. Dodd, Chicago, Illinois; (6) "Present Tendencies in Political Parties in the United States," A. R. Hatton, Northwestern University; (7) "National Administrative Organization," Lloyd M. Short, University of Minnesota; (8) "The Government and Labor Relations," Ford P. Hall, University of Indiana; (9) "Teaching Problems in Political Science," Don Hudson, Northwest Missouri State Teachers' College; and (10) "The Constitution and Foreign Affairs," D. F. Fleming, Vanderbilt University. The three noon luncheon sessions and the three general sessions, on Monday afternoon, Tuesday afternoon, and Tuesday evening, will be devoted to the discussion of constitutional questions. Addresses will be given by well-known constitutional authorities drawn from the membership of the Association and from outside. Professor Powell's presidential address is scheduled for Tuesday evening.

By appointment of President Powell, the committee to nominate officers of the American Political Science Association for the year 1938 will be as follows: Finla G. Crawford, Syracuse University, chairman; Orrin C. Hormell, Bowdoin College; Charles E. Martin, University of Washington; Harold S. Quigley, University of Minnesota; and Russell M. Story, Pomona College.

After three years as a member of the U. S. Civil Service Commission, Dr. Leonard D. White resigned in June in order to return to his professorship of public administration at the University of Chicago.

Professor Kenneth Colegrove, of Northwestern University, taught in the recent summer session of the University of California at Berkeley.

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Professor Francis W. Coker, of Yale University, gave courses at Northwestern University during the recent summer session.

Professor Graham H. Stuart, of Stanford University, taught in the recent summer session at New York University.

Mr. Ray L. Thurston, who received his doctorate at the University of Wisconsin in June, has been appointed vice-consul at Toronto, Canada.

Dr. Egbert S. Wengert, instructor in political science at the University of Wisconsin, has accepted a position at Wayne University and will devote half of his time to the Detroit Bureau of Government Research.

Dr. Arnold Tilden, of the University of Southern California, has been appointed instructor in political science at Arizona State Teachers' College.

Professor J. A. C. Grant, of the University of California at Los Angeles, taught during the summer session in the department of political science at Berkeley.

Dr. Henry F. Angus, head of the department of political science and economics at the University of British Columbia, served as professor of political science at Stanford University during the past summer.

Professor Hugh McD. Clokie, of Stanford University, has been granted sabbatical leave for the year 1937–38.

Messrs. J. William Robinson and Walter T. Bogart, of Stanford University, have been appointed instructors in political science at Purdue University and Middlebury College, respectively. Miss Victoria Schuck has accepted an assistant professorship at the Florida State College for Women.

Dr. Thomas C. Geary, who recently completed his graduate work at the University of Iowa, has been appointed assistant professor of political science at the University of South Dakota.

Professor Everett S. Brown, of the University of Michigan, has been granted sabbatical leave for the next academic year, which he will spend in travel abroad.

Professor Frederick H. Guild, while continuing as director of research for the Kansas Legislative Council, will return to the University of Kansas this fall to teach one course in the department of political science during each semester. Dr. Walter Sandelius will continue as acting chairman of the department.

Professor Bertram W. Maxwell, of Washburn College, will spend the

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coming academic year in Geneva, Switzerland, working on a manuscript on international relations.

Mr. Harry W. Marsh, formerly on the staff of the National Civil Service Reform League and first deputy of public welfare for the City of New York since 1934, has been appointed director of the newly established Connecticut department of personnel.

Aided by a grant from the faculty research fund, Professor Howard B. Calderwood, of the University of Michigan, is spending the summer in Geneva, studying the Secretariat of the League of Nations.

Mr. Grover Clark, formerly a member of the faculty of the National University of Peiping and lecturer at Columbia University, and known to students of international relations for his writings on China, has been appointed professor of economics at the University of Denver.

Dr. Walter H. C. Laves has resigned as James S. Sherman professor of political science at Hamilton College and will continue his work as director of the Midwest Office of the League of Nations Association in Chicago. He has been appointed lecturer in political science at the University of Chicago for the year 1937–38.

At the University of Washington, Dr. Linden A. Mander has been promoted to a full professorship and Dr. Maxim von Brevern to an assistant professorship.

After spending the past year as a forum leader in the public forums of California and Seattle, sponsored by the U. S. Office of Education as experiments in adult civic education, Dr. John B. Mason has joined the social science department of the Santa Ana Junior College, Santa Ana, California. In his new position, he will continue his work as a forum leader in the Orange county (California) public forums.

Mr. Fordyce Luikart, of Syracuse University, has been appointed assistant professor of social science at the Brockport State Normal School, Brockport, N.Y.

Mr. David M. French, formerly of Western Reserve University, has been appointed instructor in political science at the University of Michigan.

Mr. Floyd McCaffree has been awarded a Michigan-Brookings fellowship to enable him to complete his work on "Nomination and Confirmation of Justices of the Supreme Court of the United States."

On June 12, Dr. Roderick Lewis Carleton, associate professor of political science and head of the department at Louisiana State University,

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died from the results of an automobile accident. He was a graduate of Louisiana State University and did his graduate work at the University of Illinois, with interest primarily in the field of local government. During the past year he served as director of a newly created bureau of governmental research at his institution.

An informally organized group known as the Connecticut Valley Conference of Political Scientists held its annual meeting at Dartmouth College on May 22, with addresses by Professor Karl Loewenstein, of Amherst College, on "Legislative Control of Fascism in Contemporary Europe," and Frederick L. Schuman, of Williams College, on "Leon Trotsky, Renegade or Martyr?"

At the Seventh Institute of Foreign Affairs held at Earlham College, Richmond, Indiana, May 13–15, addresses were delivered and round tables led by Professors Arthur N. Holcombe, of Harvard University, on Far Eastern affairs, and Philip C. Jessup, of Columbia University, on neutrality, and by Hon. Green H. Hackworth, legal adviser to the Department of State, also on neutrality.

Plans for the new Graduate School of Public Administration at Harvard have been further developed as a result of a series of conferences during the spring between members of the School's faculty and some seventy-five public officials. It has been determined to postpone formal opening of the School until the autumn of 1938, to continue in the meantime the present task of exploration, and so to shape the School's future work as to focus attention primarily upon persons already in government employ. The dean of the School will be Professor John H. Williams, at present professor of political economy at Harvard and vice-president of the Federal Reserve Bank of New York.

The Lucius N. Littauer Foundation has granted $100,000 to the permanent endowment of the Graduate Faculty of Political and Social Science, composed largely of German and Italian scholars exiled by the Hitler and Mussolini régimes, and popularly known as the University in Exile. The Faculty, which is housed with the New School for Social Research, New York City, has recently been giving instruction to no fewer than 274 graduates of American colleges and universities.

Hon. Frank B. Kellogg has given Carleton College, at Northfield, Minnesota, the sum of $500,000 to be used in establishing and maintaining a "foundation for education in international relations." In addition to four scholarships for foreign students at Carleton and two for Carleton students abroad, the fund will provide for a special instructional staff of two full-time professors, with also one half-time professor from a foreign

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country. One full-time member of the staff will spend one semester each year visiting other countries.

Under the direction of Dr. W. Ballentine Henley, acting dean of the School of Government, the ninth annual session of the Institute of Government was held at the University of Southern California, June 14–18. The program covered a very wide range of topics, with emphasis upon governmental functions. Among persons from elsewhere taking part in the proceedings were Mr. Sanford Bates, former director of the federal bureau of prisons; Professor Henry M. Busch, of Western Reserve University; Mr. Carl H. Chatters, executive director of the Municipal Finance Officers' Association; Professor William E. Mosher, of Syracuse University; and Mr. C. B. Whitnall, member of the Milwaukee metropolitan park commission.

In connection with an Institute of Far Eastern Studies held at the University of Michigan during the recent summer session, regular courses were given and forums conducted by Professors Joseph R. Hayden on nationalism in the Far East, Roderick D. McKenzie on emigration and population movements in the Far East, and Charles F. Remer on trade, tariff, and money in the Far East.

The annual meeting of the Indiana Academy of Social Sciences was held at Hanover College, April 30 and May 1. A general session was addressed by Dr. Charles S. Ascher of the Committee on Public Administration of the Social Science Research Council, and a session on government was devoted to papers by Professors S. Gale Lowrie of the University of Cincinnati, P. S. Sikes of Indiana University, and Mr. Arthur Funston of Earlham College. Other sessions were devoted to papers in the field of sociology, economics, and business administration. Among officers elected for the next year was Professor Harold Zink, of De Pauw University, as vice-president.

After a year of concentration of effort largely upon research, on account of a temporary diminution of budget, the Harvard Graduate School of City Planning has been reorganized as the department of regional planning, coördinate with the departments of architecture and landscape architecture in the Graduate School of Design, thus recognizing the similarity of these three fields in their relation to the planning of the physical environment of mankind for modern conditions. It is intended that the students in regional planning shall have effective access not only to instruction in engineering, which is another field of physical planning, but also to instruction in economics, government, sociology, and related subjects.

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Series of addresses at the eleventh annual session of the Institute of Public Affairs at the University of Virginia in July included: "The Essential Conditions for International Security," by Professor Robert McElroy, of Oxford University; "Inter-American Relations," by Dr. George H. Cox, George Washington University; "International Organization for Collective Security," Sir Herbert Ames, former financial director of the League of Nations Secretariat; "Storm Centers in the Far East," Mr. Grover Clark, Washington, D.C.; and "Collective Security as a National Problem," New York City. Political scientists appearing on the program in other connections included Professors Charles G. Fenwick, Bryn Mawr College; Joseph R. Hayden, University of Michigan; and Walter H. C. Laves, Chicago, Ill.

Professor J. Donald Kingsley, of Antioch College, has been awarded a post-doctoral research fellowship by the Social Science Research Council for a study of the development of the British civil service. Similar awards include those to Dr. Harry S. Foster, of Ohio State University, for a study of the news, the public, and pressure groups in the determination of recent British foreign policy, and Dr. Lee S. Greene, supervisor of training in public administration, T.V.A., and University of Tennessee, for a study in Great Britain and Germany of research techniques used in regional planning. The Council's pre-doctoral field fellows for the coming year include Thomas Randolph Hall, III, University of Chicago, for a study in Moscow of the soviets of workmen and peasant deputies of the present day; Avery Leiserson, University of Chicago, for a study of state and federal agencies which have developed the most advanced procedure in dealing with representation of economic interests in administration; James F. Mathias, Jr., for a study of the administrative function of the English law courts in regard to pressing social problems; Robert A. Walker, University of Chicago, for a study of the non-legal techniques of planning administration; and Albert C. F. Westphal, Columbia University, for a study of American foreign policy. Grant-in-aid appointees include Professors Floyd H. Allport, Syracuse University, for a study of the behaviors involved in modern culture and institutions; Harold H. Sprout, Princeton University, for a study of American foreign policies; Arnold J. Zucher, New York University, for a study of the evolution of the presidential office in the United States; and Amry Vandenbosch, University of Kentucky, for a study of the government and politics of the Netherlands.

Clyde Lyndon King, professor of political science at the University of Pennsylvania, passed away on June 21 at his home in Westtown, Pennsylvania. For several years he had been in failing health as the result of heart weakness. He was born in Burlington, Kansas, May 1, 1879, and

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passed his boyhood on a Kansas farm. This was reflected in his lasting interest in and sympathy with farm problems, as shown in the various milk and farm commissions upon which he served. His practical knowledge of dairying, farming, and economics was of great value to the state and national governments. In 1907, he was graduated from the University of Michigan, and in 1911 he received the degree of doctor of philosophy from the University of Pennsylvania. He had been a member of the Pennsylvania faculty continuously since that time, serving as chairman of the political science department since November, 1935. Dr. King's career was remarkable in the large number of important public positions which he held. From 1916 to 1918, he was chairman of the Governors' Tri-State Milk Commission chosen by the executives of Pennsylvania, Maryland, and Delaware. In 1918 and 1919, he represented the United States Food Administration as milk commissioner for the Eastern states. He was also arbitrator of milk prices for Pennsylvania in 1919. In 1921, he served as economist to the Congressional Joint Commission of Agricultural Inquiry, comprising twelve members of Congress. President Harding appointed him a member of the Agricultural Conference in 1921 and the Unemployment Conference in 1922. In the latter year, he was a member of the advisory committee of the Commerce Department's European division, and in 1923 Gifford Pinchot, becoming governor of Pennsylvania, appointed him chairman of the Citizens' Committee on the Finances of Pennsylvania. He then served for four years as secretary and budget officer of Pennsylvania, and again in the second Pinchot administration, 1931–32, as secretary of revenue and later as chairman of the Public Service Commission. In 1933, he was appointed chairman of the dairy division of the A.A.A. in Washington. Both before and during his active career in the public service, Dr. King had been editor of the *Annals of the American Academy of Political and Social Science* (1914 to 1929). He was also secretary-treasurer of the American Political Science Association for seven years (1930 to 1936 inclusive). In the words of one of his former colleagues, "his unusual competence and his zest and drive won the admiration of every one in the Association." Dr. King was the author of several books, including *History of the Government of Denver* (1911); *Regulation of Municipal Utilities* (1913); *Trolley Freight and Philadelphia Markets* (1913); *Lower Living Costs in Cities* (1915); *The Price of Milk* (1920); *Community Civics* (1926); and *Public Finance* (1935). He will be long remembered for his success as a teacher, his outstanding ability in the public service, his untiring and unselfish devotion to the interests of our Association, his loyalty to his friends, and his high ideals.—JAMES T. YOUNG.

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History of Political Philosophy from Plato to Burke. By Thomas I. Cook. (New York: Prentice-Hall. 1936. Pp. xviii, 725.)

This book deserves a more sympathetic reviewer. One who has spent years seeking—perhaps vainly—a socio-psychological and economic interpretation of political theory is not apt to become enthusiastic over another history of political philosophy. But, while such a person may approach Cook's *History of Political Philosophy* with misgivings, if he reads the volume with an open mind, he must concede that the author has made a real contribution.

In the preface, Professor Cook modestly apologizes for adding another book to the list of histories of political philosophy and explains that what he has sought to do is to provide a text more suitable to the needs of the American student. Neither the apology nor the explanation is necessary. Even a cursory survey of this work reveals that it is not just another history of political thought. The reviewer has found no text comparable to it in organization, scope, and clarity.

The work is distinctive in many respects. The style makes the study remarkably lucid and interesting. The philosophers introduced are not distorted to the point of abstraction, but appear as human beings placed in their proper historical setting. The issues involved are frequently translated into terms of contemporary political experience. Such a presentation should make political theory both understandable and attractive to the American undergraduate.

Fortunately, this method of presentation has been made without a sacrifice of scholarship. Professor Cook has not only read the classics, but he has delved into much supplementary material in order to put a philosopher into his proper niche. He has not taken unwarranted liberties with a philosopher's presentation of his case. He refrains from systematizing. The historical background is furnished; the philosopher is introduced; and then follows a résumé of his theories.

In this manner, Professor Cook treats all of the familiar figures and even introduces some new characters. We may quarrel over the space allotted to our favorites. That is a matter of taste and interest. Suffice it to say that the major philosopher is usually given a chapter while the minor prophet at least receives consideration. No one is dismissed by a mere mention of his work.

Such treatment is possible in a volume of this size. Herein lies the book's weakness as well as its strength. It is a text-book, and while it is one of the most readable commentaries on political philosophy in the English language, it has the defects of a text-book. The study covers the period from Plato to Edmund Burke. The author intimates that he is

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at work on a companion volume which presumably will bring the work up to date. The present book contains more than 700 pages. Developments since Burke probably will necessitate a treatment equally voluminous. This would make the work usable only in institutions which can devote a whole year to the history of political philosophy. No matter how detached a commentary pretends to be, it is interpretative, and, if a student is required to devote so much energy to a text, when is he going to find time to con the sources?

However, in our system of mass education, a text seems to be indispensable, and Professor Cook deserves our gratitude for providing something exceptional. The work merits a wide adoption, and, thanks to its lucidity, it should attract a large number of lay readers.

WALTER THOMPSON.

Stanford University.

A History of American Political Thought from the Civil War to the World War. By EDWARD R. LEWIS. (New York: The Macmillan Company. 1937. Pp. x, 561.)

Between 1865 and 1917, the economic life of the United States was transformed. In size, in structure, in methods, and in power, the industrial organizations of the country were so altered that by the time of the World War a retired captain of industry of the Reconstruction era who had been sojourning in the South Seas for half a century would hardly have recognized the economic society of his earlier successes. These changes, together with the enormous growth in population, resulted in political modifications and adjustments, but they were almost altogether within the framework earlier constructed. During this period, there were no important controversies about the fundamental principles of government. Likewise, there was no *Federalist*, nor even any *Disquisition on Government*. But there was much political discussion and a good deal of political theorizing. If individually none of it seems likely to win immortal fame, collectively it is worth much more searching analysis than has ever been given it. Surveys we have had, as well as two or three brilliant commentaries upon particular aspects of it, but there is no single study which successfully knits its various strands into a comprehensive and clearly conceived pattern.

In Mr. Lewis' book, the various types of political thinking of the age are divided into three groups: constitutional, systematic, and controversial. The first third of the work is more accurately to be designated as constitutional history than as a study in political thought. Under our governmental system, and in this period in particular, the material here dealt with is an essential part of any satisfactory discussion of political thought. But it is not, I think, captious to expect the author to do a great

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deal more than summarize. Mr. Lewis's discussion is much better as a narrative of the effects of the Civil War amendments, especially the Fourteenth, than as an analysis of the political thought, partly implicit, partly explicit, which was a part of the developments with which he deals.

In Chapters V and VI, the writings of the systematic political philosophers and the jurists are considered. The author is more at home with the jurists, who are certainly better company, than with the political philosophers. His summaries give a fair picture of the books under discussion, but I could wish for a more critical appraisal of the ponderous sterility of certain of these writings.

The last section of the book (Chapters VII–XIII) is much the best. Here we have a reasonably adequate, and at times very incisive, discussion of the various political controversies which, along with the expansion of the judicial power, give to the age its distinctive color. The Grangers, the Populists, the Progressives, and Henry George, Edward Bellamy, and their followers are the central figures. Mr. Lewis' treatment of Bryan, LaFollette, Croly, and some of their conservative opponents, such as Sumner, is excellent. If his characterizations lack the brilliance found in the studies by Parrington, Chamberlain, and Hicks, they frequently show much more understanding of the tradition within which these men worked, a clearer appreciation of what the reformers and their opponents were attempting to achieve. On the whole, this portion of the book is well tied together, even though the author's method is primarily that of a series of separate essays on individual men. It may be unfair to criticize Mr. Lewis for not having brought out with equal clarity the relation of the writings of the controversialists to constitutional decisions and systematic treatises. At any rate, this broader and very difficult task remains undone.

BENJAMIN F. WRIGHT, JR.

Harvard University.

Political and Economic Democracy. EDITED BY MAX ASCOLI AND FRITZ LEHMANN, WITH A FOREWORD BY ALVIN JOHNSON. (New York: W. W. Norton and Company. 1937. Pp. 336.)

The twenty-one essays which make up this collection are the outgrowth of a General Seminar conducted by the Graduate Faculty of the New School for Social Research. They range over a wide field—the relations of government and economic life, problems of public opinion, political parties, representation, parliamentarism, leadership, administration, constitutionalism, nationalism, and foreign policy. The great majority are suggestive and stimulating. The only obviously bad apple in the barrel is an essay on "The Concept of Democracy," which suffers from that barren

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kind of verbalizing which the late Justice Holmes used to call "churning the void to make cheese."

Specialists in the relations of government and economic life will find the first half of the volume especially rewarding. Professor Gerhard Colm's "Is Economic Planning Compatible with Democracy?" stands out as a model of incisive, carefully-reasoned exposition in a highly controversial field. Dr. Kähler, who writes on trade unions, sees hope for democracy in the passage of the labor movement from "protective and defensive" tactics to a "really creative policy" which will guarantee a steady coördination of the means of production. Professor Heimann explores the possibilities of works councils as instruments for "constitutionalizing" the position of labor in industry. Professor Frieda Wunderlich contributes a timely survey of "The Regulation of Labor Disputes" which draws largely on foreign experience and helps to dispel the superficial glamour of compulsory arbitration. Dr. Littauer reassesses the Sherman Act as an instrument to check "oppressive economic power." Professor Hans Staudinger sees public utility regulation passing from negative interference to state-fostered integration and developmental planning. Professors Karl Brandt and Horace Kallen present the case for agricultural and consumers' coöperatives as institutions for decentralizing economic and political power.

Also worthy of notice are two brilliant contributions by Professor Max Ascoli on "Political Parties" and "Government by Law," Professor Arnold Brecht's thoughtful discussion of the implications of expanding administrative functions for democratic government, the penetrating analysis of social stratification by Professor Hans Speier, and Professor Emil Lederer's reflections on the available instruments of democratic defense against movements which endanger the democratic process.

In the spate of books on the "problems" of democracy, this one should fill a unique place. Here is a distinguished company of European scholars who, as Dr. Alvin Johnson reminds us, "have experienced at personal cost what the eclipse of democracy means, for learning and for life." What lessons for democracy do they distill out of the bitter brew of their common experience?

To pose this question is to suggest a hortatory purpose which this volume for the most part avoids. For while the contributors are at one in their condemnation of dictatorship, consensus stops at the threshold of program-making, and democracy itself turns out to have different meanings for different contributors.

The paradox which haunts this book—as it haunts so much of the recent discussion of democracy—is the unresolved contradiction between political equality and economic inequality. The tension which it generates pushes some of the contributors in the direction of collectivism, while it

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forces others to see in every movement toward the rapid equalization of wealth an incitement to fascism or civil war. The result is a volume which admirably mirrors the contemporary dilemma of liberalism and inevitably encounters difficulties in defining its central concepts with precision or clarity.

Yet it is possible to press a paradox too far. This symposium makes no pretense of being an essay in agreement. It remains rather a collection of independent papers, scholarly and dispassionate in tone, exploring a variety of social, political, and economic problems which trouble democratic governments today. Each contributor has focussed his attention on that facet of democracy which enlists his interest and special competence; the thread of unity which lends pattern to the whole is the common search for a *via media*, a moving equilibrium which will enable democratic political institutions to survive the strains and tensions incident to the increasing penetration of government into economic life.

MERLE FAINSOD.

Harvard University.

The Rôle of Politics in Social Change. BY CHARLES E. MERRIAM. (New York: New York University Press. 1936. Pp. 149.)

In the six lectures comprising this book, delivered under the Stokes Foundation at New York University, Professor Merriam deals with broad aspects of the subject treated more systematically in his work on *Political Power*. The theme is the problem of relationship between political and economic factors in present-day civilization. The author pleads for an experimental and flexible readaptation of political-economic organization to meet the challenge of new needs and new conditions arising out of the rapidity and complexity of social change. It is the approach of a "liberal" who rejects alike the complacency of laissez-faire and the dogmatism of Marxian revelation. A "pure" economic order and a "pure" political order are alike chimeras. The effective trend is towards new "mixed" controls, combining economic and political methods and forms of administration. "Innumerable varieties of these hybrid types are constantly springing up, especially under modern industrial conditions, although, as already indicated, they were familiar institutions centuries ago. The London Passenger Transport Board, the Tennessee Valley Authority, the German Kohlenparliament are examples taken from different fields, but all illustrating the same principle of combining semi-governmental, semi-industrial powers in novel forms of organization" (p. 53).

There is shrewd observation and pithy expression in the development of this thesis. It has the mellow sagacity of a man who does not detach his thinking from practical affairs nor let his practical experience blunt

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his thoughtfulness. Thus in his chapter on "The Philosophy of Pessimism and the Practice of Violence" he reviews extreme doctrines with both understanding and eminent sanity. Occasionally, however, the author reveals the defects of his qualities, descending to a level of sententiousness. This is particularly true of Chapter IV, which consists of a series of rather trite and disconnected remarks about conservation and change.

R. M. MacIver.

Columbia University.

American Constitutional Law. By Charles W. Gerstenberg. (New York: Prentice-Hall, Inc. 1937. Pp. xiii, 742.)

The public to whom this volume is offered consists of those constitutional law instructors who find themselves in a great hurry. It is not a treatise, and does not hold itself out as such. The author claims only the modest intent to give us a "text and case-book for students who have relatively little time to devote to a big subject." In paging through the book, one finds an introductory chapter of fifteen pages on the development of the Constitution, two hundred sixty-five pages in nineteen more chapters devoted to a compact, textual survey of American constitutional law, and four hundred thirty-six pages taken up with opinions from approximately seventy cases.

The discussion of the background of the Constitution is inevitably sketchy, but even accepting the author's own limitations of space, he might have given some picture of the political philosophy of the founding fathers. In his eagerness to crowd in as much of the factual chronology as possible, he has forgotten the other aspect.

The text material and the cases are classified under substantially the same, and the usual, headings. Making allowance for ordinary differences in individual opinion, the cases are well chosen and well edited. The text itself is a sequence of sentence summaries of important constitutional cases. The material is organized under topical and sub-topical headings, and it has been compactly and accurately set forth. Further, the author has been careful to indicate in his notes the fact peg for each case cited. He might have increased the usefulness of his volume, however, by including a table of the cases cited in this section.

The volume is an effort to present a broad survey of the field of American constitutional law. As a summary, it is well done; but one finds no emphasis and no critical analysis. Consequently, the problem of evaluation revolves on the author's assumption that for class use it is best to give brief attention to as many constitutional issues as possible. This raises sharp conflict, of course, with the view that the more effective study of constitutional law is analysis of the process of judicial review rather than the memorization of the rules of cases on every aspect of the subject.

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It may be said, it is true, that this book is the basis from which the instructor must develop this analysis and criticism, but the volume has spread so thinly over the broad field that the sections relating to the major, complicated constitutional problems are not full enough to serve as such a basis.

Only in the last paragraph of the text does the author take flight. He notes the increasing collectivist trend, cites the police power as the battle-ground, and comments on the conservatism of the Supreme Court. He shows no recognition of the significance of the federal-state division of power formula as a "collectivism" battle-ground of even greater importance now. All of which indicates merely that if the author had been analytical and critical, the reviewer would probably have disagreed with him.

EARL H. DELONG.

Northwestern University.

Public Administration in the United States. By HARVEY WALKER. (New York: Farrar and Rinehart, Inc. 1937. Pp. x, 698.)

This work, along with a former volume entitled *Law Making in the United States*, aims at an introductory study of American government on the functional basis of "politics" and "administration." It begins with four chapters on the nature of public administration, the evolution of governmental and administrative organization, and the control of administration; then follow seven chapters on staff activities, and nine on the public services of government. By thus including some account of the manifold services of government, it covers more ground than other recent works on public administration; and as a result the treatment of staff activities is less extensive than in works which limit themselves to staff agencies and their activities. This treatment implies a broader (and to the reviewer a more satisfactory) conception of the scope of public administration than that of other recent works.

Staff activities include a long chapter on public personnel administration, four chapters on finance, a chapter on government reporting, and one on other functions. The last of these is a distinctive addition to the usual list of staff activities, with sections on legal advice, architectural and engineering services, office accommodations, and preserving public records; and the author is to be commended for recognizing these usually neglected phases of public administration. The chapters in this Part II present a reasonably adequate account within the space available.

The chapters on public services are necessarily limited to relatively brief accounts of the almost countless activities in this field. While the difficulties of dealing adequately with all these topics within the limits of a single volume may readily be conceded, the treatment is not always

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well balanced, and it neglects some important aspects. In general, there is a relative over-emphasis on the activities of the national government, especially in the chapters on public welfare, education, and government in business. On the other hand, the chapter on judicial administration gives only four pages to the United States courts, with nothing on the jurisdiction of the several courts, or on the important subject of admiralty law. Nor is there any discussion of the historical development of the various public services, and of the changes in the relative importance of national, state, and local administration.

In respect to administrative organization, Mr. Walker also gives relatively little attention to local government. He is critical of state reorganizations as combining political and administrative functions in the governor, and as supplying no definite evidence of financial economy. A summary of the recommendations of the President's Committee on Administrative Management is presented without comment.

As an introduction to the field of public administration, the work serves a useful purpose, presenting a survey of the manifold services now performed, with less technical detail of the specialized staff agencies.

JOHN A. FAIRLIE.

University of Illinois.

The Story of the Supreme Court. By ERNEST SUTHERLAND BATES. (Indianapolis and New York: The Bobbs-Merrill Company. 1936. Pp. 377.)

The Ultimate Power. By MORRIS L. ERNST. (Garden City: Doubleday, Doran and Company. 1937. Pp. xv, 344.)

These two books are alike in that both were written for the general reader and from the liberal point of view. Mr. Bates carries his story of the Supreme Court through the 1935–36 term. His facts are naturally not the products of his own original research, and he makes no pretense that they are. He uses, with due credit, Warren, Myers, Boudin, Corwin, and Swisher, and, indeed, a very considerable bibliography. He assumes the validity of the liberal thesis, and interprets the facts accordingly. In so doing, he makes some rather sweeping historical judgments, as when, to give a single example, he refers to the Dred Scott case as "a decision which precipitated the Civil War" (p. 158). His book is a very readable and in many ways useful short story of the Court. Whether it is history may depend upon one's definition of the term. The net result is a pretty thorough job of debunking, although it is not done offensively—unless it is offensive to lay one's hands upon the Ark of the Covenant. The reviewer's prejudices are enough like those of Mr. Bates for him to enjoy this aspect of his volume.

Mr. Ernst's "ultimate power" is, of course, the power of judicial

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review. There are twenty-seven short chapters divided into ten parts: We Break from England; We Form a Nation; The Document; The Three Departments and the Right to Change; The Judges Claim the Veto Power; From Pine Knot to Candle to Whale Oil to Gas to Electricity; Three Leeways; The Court Vetoes Congress; The Seventy-six Economic Gods of 150 Years; and How to Curb the Judges.

The general reader should beware of some of Mr. Ernst's sweeping statements. From his book the specialist in this field will learn nothing new. The author uses the device of breaking into his story with gossipy paragraphs in italics.

What does Mr. Ernst suggest? The proposal to add new judges to the Court he calls one of "cringing desperation. It might bring temporary relief but certainly has no enduring benefits .... Jefferson's and Madison's appointees did not sustain their acts but joined with Marshall. Jackson's appointees opposed his policies soon after appointment. Then again, who would be added? ... These perversities of selection should give the proponents of this approach considerable pause" (pp. 316–317). As for "constitutional amendment by change of vocabulary," the author says that "the judges will again whittle away any new words we may select" (pp. 317, 320). He prefers to allow Congress to override any decision of the Court (p. 322), at any rate by a two-thirds vote (p. 323).

JAMES HART.

University of Virginia.

Government in Rural America. By LANE W. LANCASTER. (New York: D. Van Nostrand Company, Inc. 1937. Pp. xi, 416.)

This book is not, as the reader might anticipate, a text-book on rural local government. It is instead a study of rural influences upon government. Professor Lancaster is far more interested in what rural America thinks, why it thinks as it does, and how it responds to political and governmental stimuli, than in the forms and functions of government peculiar to any particular setting. In his study, he focuses attention upon the social, economic, and psychological factors peculiar to our agricultural regions, demonstrates the extent to which these factors determine the character of local institutions, and shows, in turn, the influence of local politics and administration upon government at all levels. The descriptive and analytical parts of the study support the thesis that these "traditional rural modes of thought" impede political development and retard administrative reforms. However, the author does not add (as he most certainly should have) that this rustic political philosophy which professes an immutable faith in sorcery, hocus-pocus, and witch-doctors is not confined to our agricultural regions.

Modern problems of government are attributed by Professor Lancaster

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to our inability to absorb the lag created by the rapidly changing social and economic order. The agricultural element of our population resists change; consequently, these maladjustments are particularly evident in the rural areas. Local government remains "the dark continent of American politics" primarily because rural America thrives upon prejudice, cherishes "the amateur tradition," and worships "the homespun virtue of 'common sense.'" Whether or not the analysis is always sound, whether or not the author is entirely fair in his portrayals of rural characteristics, are matters to be judged by the individual reader. The reviewer is at times puzzled to know whether Professor Lancaster is criticizing that which he cannot understand, or is merely impatient with people whom he knows, perhaps, all too well.

The author is little disturbed by the multiplicity of areas or the superficial differences in forms and functions. It matters not that the local area be the county, the town, the township, or the school district, the psychology is the same and, consequently, the basic problems in local government are common to all sections of rural America. Furthermore, the rural areas present no unique problems in government and administration. City and rural problems become identical in their essential nature. Proceeding upon this hypothesis, the author emphasizes the rural influence but presents his subject as part and parcel of the general problem of government and administration in the United States. In the first five chapters, the author defines the issue, presents its social and economic background, and demonstrates the rural attitude; he devotes the remaining chapters to an analysis of the administrative problems involved in the management of public affairs at the local level.

The book is carefully and adequately documented. The material is well organized and thoughtfully arranged. However, the author quotes so extensively from various sources that the reader will at times experience difficulty in determining the author's personal conclusions and convictions. Professor Lancaster's contribution lies in his approach, wherein he has properly emphasized the stereotypes which have so long dominated rural political thought.

HAROLD M. DORR.

University of Michigan.

The Recovery Problem in the United States. By MEMBERS OF THE BROOKINGS INSTITUTION STAFF. (Washington, D. C.: The Brookings Institution. 1936. Pp. xiv, 709.)

L'Expérience Roosevelt. By LOUIS R. FRANCK (Paris: F. Alcan. 1937. Pp. 386.)

The Brookings studies have established for themselves a unique place in applied social science. They offer one of the few broad comprehensive

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sources of unbiased data on current government policies. The present survey begins with a brief memorandum on maladjustments arising out of the War which have led all governments to intervene extensively in economic affairs. Most of the earlier laws were of a defensive nature, aimed to stop the "downward spiral of deflation." Others were offensive in purpose, intended to prime the pump and start the economy on the upward curve. Some programs relied chiefly on fiscal and monetary changes, others upon starting up activity in factory and farm. The highly condensed summary of these recovery measures in fourteen selected countries, as given in Appendix B, is an invaluable feature of the book.

Although the present recovery movement has been under way for several years, the improvement thus far reached has not been sufficient to absorb unemployment nor to restore former living standards. The authors see certain favorable and certain unfavorable influences. Favorable are: (1) the abundance of funds at low rates of interest; (2) the reduction in the burden of private debt; (3) the satisfactory rise of wages as compared with prices (until recently); (4) the improved balance between agriculture and industry; (5) the disappearance of uncertainty on monetary policy (the book was written before the revival of doubt concerning the gold price); (6) commercial policy is slowly beginning to favor expansion of foreign trade (this likewise is subject to modification); (7) the stimulus to production given by accumulated deficiencies of goods; (8) the lessened confusion, doubt, and uncertainty as to government regulative policies (here again a favorable factor has disappeared). Unfavorable are: (1) major difficulty of setting up fiscal stability; (2) danger of inflation in credit and prices; (3) labor policies, especially forced reduction of working hours and lowering of production; (4) danger of inadequately prepared, hasty legislation in the industrial field; (5) the highly unstable international situation.

How far have we recovered? Summing up the surface indications of recovery, the authors find that in 1932 the annual output of goods and services was thirty-five per cent below that of 1929, and that by the middle of 1936 it was only thirteen per cent below. But this, they hold, is not an accurate picture. "When growth of population and normal progress are taken into account, output in 1936 appears to be 25–30 per cent below that indicated by the 1929 level." In a later address interpreting the survey, Dr. Moulton is reported as saying that in order to restore a 1929 living standard, with the present population, we must increase productivity over and above the rate prevailing in the middle of 1936 by the following percentages: housing, 208; industrial, 60; public utilities, 70; steam railroads, 67; passenger autos, 15; and other consumer goods, 33.

These figures take into consideration the restricted rate of production of the last seven years, the continued growth of population, the additional

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replacement needs, etc. Taking the market value of goods and services produced in 1936 at $60,000,000,000, it is estimated that if divided equally this national income would have amounted to about $470 per person, or $1,900 per family. To rise from this pitifully low standard, our first and greatest need is a great increase in production. Our minimum task, then, is (1) to make good the deterioration of plant and equipment sustained during the depression, (2) to increase *productive* capital in line with the growth of population, and (3) to expand the output of consumption goods in accordance with this increased population. The full-time employment of from eight to nine million additional workers would be required in this task, on the basis of present working hours.

Early in the survey, the authors come to grips with fundamental questions of policy in any American recovery program. Is recovery to be reached by restriction of output and reduction of hours? Two of the most enlightening chapters of the book, "Production and Productivity" and "Wage and Hour Policies," are devoted to answering this question. It is a remarkable fact that no high executive officer nor any committee of Congress has presented to the public any comprehensive data on these problems. Yet complete programs dealing with these points have been offered to Congress for enactment into law.

The Brookings survey brings us squarely face to face with basic reasoning on this subject. What, it asks, would be the effect of adopting the demand for a thirty-hour week or any other of the drastic reductions in working time? In substance, whether these demands come from presidential or congressional sources, they all rest upon the same thought, viz., that hours should be systematically reduced in proportion to the increase in productive efficiency. It is, in short, a "spread the work" program which is in turn based on the ancient "wage fund" theory.

No living economist today harbors the fixed wage fund idea save as a museum piece. If, say the authors, in the period from 1920 to 1929, hours had been reduced in proportion to growing efficiency, "*all* of the gains resulting from the increase in production efficiency would have had to be realized in the form of greater leisure—none in the form of higher standards of living." And if such a plan were adopted now in order to absorb unemployment, the volume of national production would be frozen at or near the present low level, that is, $470 per person. And even if our wages were actually increased by reducing working hours to thirty or forty per week, could we buy with the added monthly income more goods than were produced? Or would we have to pay out the increased income in higher prices for the same goods? How can we supply the undoubted basic need for *more goods* by spreading among more people the present number of available jobs and working hours?

Contrasting with this policy, the authors offer their own program:

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(1) a balanced federal budget; (2) some fixed price for gold, with international coöperation to stabilize foreign exchanges; (3) extension of reciprocal trade agreements; (4) emphasis upon price reduction to improve the economic position of all groups; (5) maintenance of prevailing hours of labor; (6) elimination of industrial policies, both public and private, tending to restrict output or to prevent increased productivity; and (7) shifting of emphasis in farm policy from restricted output and higher prices to abundant supply of raw materials and food-stuffs for expanding markets.

Of quite unusual value are eight appendices dealing with world trends and the sources of information thereon, recovery laws in fourteen foreign countries, employment, wage and production data, durable goods data, prices, public finances, private debts, and international trade and finance. Although the work throughout is unbiased and non-partisan in tone, the politician in both executive and legislative branches will find it full of inspiring materials and reasoning. If its findings are studied widely with an open mind, we may even look forward to an earlier transition from emotional slogans to measures of more enduring value.

Monsieur Franck's book interprets to the French reader the essential features of the New Deal program in its first stage, up to about the end of 1935. There is a great wealth of material on N.R.A. and the codes and an intelligent attempt to evaluate the economic and social results. The author rates these results low, while praising the spirit and effort which they represented. There is a good general perspective and an appreciation of the forces, distinctively American, which have produced the New Deal itself and the vagaries of Dr. Townsend, Father Coughlin, and Huey Long. There is also some effort to appraise the economic literature produced by the depression, and the best independent sources of information have been well worked up. The author, however, has not been equally successful in his attempt to give an impartial picture of the origin and legislative history of some of the principal New Deal laws. It is natural that a Frenchman writing of American events should judge many of them from the viewpoint of recent French developments. Perhaps for this very reason the book, while offering little new to the American public, will prove informative and helpful to the French reader.

JAMES T. YOUNG.

University of Pennsylvania.

War Memoirs of David Lloyd George. (Boston: Little, Brown and Company. 1936–37. Vol. V, pp. 464; Vol. VI, pp. xvi, 406.)

Through Volumes V and VI of his *War Memoirs*, Mr. Lloyd George continues his caustic castigation of the Allied military leaders for their needless, not to say stupid, incompetent, and criminal, wastage of the

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lives of tens of thousands of their best troops in hopeless attacks on impregnable defenses—attacks which resulted in no strategic advantage and which, Mr. Lloyd George points out, were opposed by men of ordinary common sense (but no military training) as foredoomed to failure. It is not merely the knowledge of hindsight which justifies his excoriating comments. In the Somme campaign, for example, over 500,000 of England's best youth were tossed into the maws of death *after* it had become clear to the civilian leaders that it was impossible to break through the German lines in that region. The British losses were twice as great as those inflicted on the enemy, and nothing was gained.

In a chapter of his last volume (Chap. X, "Some Reflections on the Functions of Governments and Soldiers Respectively in a War"), Mr. Lloyd George tells how he urged the cessation of this useless slaughter, and considers whether he should have resigned when his advice was rejected. He consoles himself with the bitter reflection that, after all, the "fighting of a battle is mainly a decision for the generals." But the generals available had had no actual experience with the realities of a war like that they were attempting to wage in France. A life-time in barracks or staff colleges studying the tactics and strategy of past wars was no preparation for the problems of the World War. The "best" military brains of the English army, the author points out, were mediocre at best; and the military mind appeared totally incapable of acquiring the flexibility necessary to forget cavalry tactics learned in the Boer War and in staff colleges, let alone the insight and break with tradition necessary to wage successful war in the slime of Flanders. Moreover, "seniority and society were the dominant factors in army promotion. Deportment (i.e., obedience) counted a good deal. Brains came a bad fourth." The ablest brains were never permitted either to climb to the top or to reach the attention of government officials.

No one not prejudiced from the outset can read these two volumes without gaining an indelible impression of the stupidity and incompetence of the military so-called mind in matters of strategy. Incompetent to plan campaigns which called for intelligence, mental flexibility, and a large degree of common sense, the true rôle of the generals appears in their execution of later campaigns planned by men less atrophied by tradition.

The outstanding exception noted by Lloyd George is the case of Marshal Foch. Here again, the civilians, Lloyd George and Clemenceau, encountered the bitter and unintelligent opposition of Haig and Pétain to the creation of a unified Allied command—particularly if headed by Foch, whose genius in their chosen field they quite failed to appreciate.

Mr. Lloyd George's side of his struggle with Pershing over the question of whether American troops should be used to fill out depleted British and French regiments or should be kept in reserve until a unified Ameri-

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can army might be organized is told with some bitterness; but his case is not as convincing as the briefs that he prepares against Haig or in favor of a unified Allied command. In a most interesting chapter in Volume V, Lloyd George tells of his relations with the grizzled Clemenceau. Other chapters analyze the campaigns of 1917–18, the military and political implications of the revolution in Russia, the breakup of Germany's allies, and the coming of the Armistice. The pen of Mr. Lloyd George is always dipped in color, sometimes in venom, and is occasionally repetitious. One welcomes the hint in his last volume that he may yet find time to write a series of memoirs on the making of the peace treaties.

HERBERT W. BRIGGS.

Cornell University.

The Administration of Justice in Great Britain. By CALEB PERRY PATTERSON. (Austin, Texas: The University of Texas Press. 1936. Pp. viii, 326.)

Professor Patterson states in his preface that "it is the purpose of this study to show the evolution of the judicial system of Great Britain, its organization, jurisdiction, procedure, and administration, as well as the organization of the English bar and police system, together with their relations to the judicial system in the administration of justice," and that the book "is intended to be suggestive in the further modification and adaptation of the jurisprudence of the American state to the needs of a highly organized type of society." This is perhaps too broad a statement of objectives for a study of some three hundred pages of the type undertaken by the author. He has nevertheless brought together a considerable body of information which will serve as a useful guide for the layman, or for the beginning student of political science, who wishes to secure a bird's-eye view of the English courts and judicial methods.

Among the principal topics of discussion are the development of local courts, the evolution of the royal courts, defects of the old system, the hundred years' war for legal reform, reform prior to 1873, reorganization in 1873–75, the magistrates' courts, the county courts, the High Court of Justice, courts of appeal, the administrative system, the jury system, the legal profession, and the police system. Some suggestive criticisms are outlined in a brief but interesting concluding chapter.

Mr. Patterson's treatment of the wide range of topics above indicated is, needless to say, neither exhaustive nor definitive. His chapters dealing with the courts, while informative in that they contain much historical and statutory material relating to such matters as organization and structure, jurisdictional limits, judicial powers and functions, and methods of procedure, would have been greatly enhanced in value had the descriptive material been supplemented with a more intimate and

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detailed study of the customary and unwritten processes of administration which are so important to an understanding of English justice. It is unfortunate that Mr. Albert Lieck's illuminating article, "Abolition of the Grand Jury in England,"[1] was not brought to the author's attention before he prepared his discussion of that topic (pp. 201–204).

Mr. Patterson's study is clearly written and contains an excellent series of charts and a well-selected bibliography. It can scarcely be called a "popular" or "controversial" book, to be read as a matter of general interest; but for those who wish a brief survey of some of the salient features of the English judicial process, it is well worth reading.

PENDLETON HOWARD.

College of Law, University of Idaho.

The New Soviet Constitution; A Study in Socialist Democracy. By ANNA LOUISE STRONG. (New York: Henry Holt and Company. 1937. Pp. 169.)

In her readable book, *The New Soviet Constitution*, Anna Louise Strong has contributed an enthusiastic evaluation of the new Soviet fundamental law. The outstanding feature of the new constitution is the creation of a directly elected legislature, which is no doubt an improvement over the old complicated system of indirect elections. The present constitution also grants suffrage to all citizens, except the mentally deficient and persons condemned by law. There are a great many provisions such as the right to work, guarantee of social insurance, adequate rest periods, etc., which are not really innovations, as they are to be found in the Soviet Labor Code. After reading Miss Strong's book, one is left with the impression that the Soviet Union is casting off the uncompromising harshness of revolutionary fanaticism and adopting a more tolerant, one might say more civilized, attitude toward political and social life.

The new constitution provides for freedom of speech, press, assembly, and demonstration—pleasant words in this world of dictatorships. But the proof of the pudding is in the eating. Constitutional provisions can be taken seriously only when certain fundamental rights of man are respected by the government. The Weimar Constitution is still theoretically in force in Germany, but it has been reinterpreted by decrees in a way that eliminates every vestige of freedom. Miss Strong possesses an infectious enthusiasm, but the recent news from the Soviet Union prompts one to hesitate in joining her in the acclaim of the new Soviet Democracy. The reviewer is very much afraid that slavish obedience to the party "line" will continue to be the measure of loyalty not only in politics and economics but in all phases of cultural life.

When it comes to dealing with racial and national minorities, the

[1] 25 *Journal of Criminal Law and Criminology*, 623 (1934).

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present Soviet régime is infinitely superior to that prevailing in most European countries. Contrasting with the savage treatment of minorities in Germany and Poland, and in pre-Bolshevik Russia, the Soviet constitution provides for equal rights for all citizens irrespective of their nationality and race. And these rights are made irrevocable. All privileges and disabilities because of race and the "propagation of racial and national exclusiveness or hatred and contempt shall be punished by law." That these are not empty words, the Soviet government has proved in practice for twenty years.

It is unfortunate that the new constitution was promulgated at a time when the state of affairs in Europe inspires the Soviet Union with mortal fear of invasion; for fear is not conducive to democratic freedom. It can only be hoped that at some future time, after war madness passes, the people of the Union will be enabled to enjoy some of the liberties granted by the new constitution.

Miss Strong is to be congratulated on her excellent translation of the new constitution, and on the inclusion of an appendix indicating the chief changes from previous Soviet constitutions.

BERTRAM W. MAXWELL.

Washburn College.

Grundlagen und Methoden Internationalen Revision. BY WERNER GRAMSCH. (Stuttgart and Berlin: Kommissionsvereal Deutsche Verlags-Anstalt. 1937. Pp. 181.)

As is entirely justifiable and highly to be desired, the author of the present monograph conceives of revision and treats of the subject not merely as a revamping of certain texts, but as a reconsideration of international legal and factual arrangements in general. As a result, his treatment of the problem has much more to offer by way of general legal and social theory than, for instance, Kunz's monumental but limited study of a few years ago.

Not that Dr. Gramsch fails to get down to details. After a theoretical introduction on the concepts of peaceful change and revision, he proceeds to a discussion of the bases of revision in ethical principle and in conventional and customary international law. He supplements this with some consideration of more special bases for revision which he finds in certain principles of international organization, such as the doctrines of flexibility and reasonableness and others still more philosophical in character. The latter half of the book is taken up with a study of methods and procedure: revision of treaties on the basis of inapplicability, after some decision to this effect by the parties or a third party or agency, including the League or its organs, and revision of international arrangements not regulated by treaty. Seven pages are given in conclusion to a consideration of the

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positive regulation, so far as it exists, of the bases and methods of international revision. A somewhat uneven bibliography follows (no mention is made of Kunz's main work or of the fragmentary but useful preliminary study published by the Geneva Research Center).

As implied at the beginning, the reviewer regards this contribution to one of the two main problems of international organization as valuable and stimulating. It carries the discussion over from a too close preoccupation with texts and details of procedure to the field of legal theory, and even ethics, sociology, and pure philosophy, and this is a salutary corrective. On the other hand, the treatment here seems to be somewhat too far in the direction of pure ideology and theory, thus appearing too facile and too optimistic. What is needed, however, is not merely a cross between Kunz and Gramsch. What is needed now is a study of forces making for and against the application of the Gramschian ideologies to the textual problems, examined by Kunz, of the relation between security and revision—the whole *realpolitik* of the problem.

PITMAN B. POTTER.

Institute of International Studies,
Geneva, Switzerland.

International Politics. By FREDERICK L. SCHUMAN. Second Edition. (New York and London: McGraw-Hill Book Company, Inc. 1937. Pp. xxi, 789.)

When this book appeared in its first edition four years ago, it impressed this reviewer as embodying the most brilliant and challenging interpretation of modern world politics of any volume of its scope and design. It was, however, even for a text-book, long and diffuse, partly because of the inclusion of omissible historical material, and partly because its author's felicity of expression (for which, among political scientists, he should not be condemned) made writing too attractive. This revised edition has lost none of its original power and acuteness, and it has gained through compression. Part I has happily been reduced by one-third, and page after page has been slashed from the remainder. In spite of its total abbreviation by one hundred pages, it contains much additional material on international events from its first publication down to March, 1937. The revision stands as an accomplishment of great merit.

Unlike most works serviceable as text-books in the field, Professor Schuman's treatise achieves unity and vigor through a driving consistency of interpretation. He starts with, and sustains throughout, a basic proposition: the forces of conflict in international politics are "more significant" than those of coöperation. Despite the invaluable service that he has rendered in demolishing the opposite assumption, which had been long in vogue, and despite the compelling quality of his thesis, this re-

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viewer feels that he is the victim of his own recoil. Experience suggests that co-action is a phenomenon not less significant than contra-action. The two represent logical poles between which all concrete state action lies. The basis of coöperation need not be world community, as Professor Schuman seems to imply, but may be, in one sphere, less-than-world community, and in another, reciprocity and compromise. "Significant" evidence of co-working behavior exists and cannot be ignored in analysis and prediction.

Professor Schuman's gloomy, and even fearful, outlook for the future is embodied in his premise. If the forces of conflict are accepted as irresistibly dominant, war with certainty follows. In his revised edition, he has cast caution to the winds and set the date as 1938 (referring to Germany: p. 423) or 1940 (respecting Italy: p. 430). A single chance for peace remains—the formation of an effective united front of all non-Fascist powers against any aggressor—but this possibility he dismisses as an illusion (pp. 643–644). Further, he intones the funereal chant for the Western state system. The dilemma is inescapable. A long descending twilight ends in political and economic disintegration.

There is no flaw in his argumentation: it is rigorous and brilliantly sustained. It may, however, rest on a premise embodying a half-truth. Time will give the answer. In any event, few writers on international politics perceive that half-truth (if such it be) so clearly, and none defend it with such adroit manipulation of evidence, or with such magnificent verbal embellishment.

WILLIAM P. MADDOX.

Princeton University.

Analysis of the Problem of War. By CLYDE EAGLETON. (New York: The Ronald Press Company. 1937. Pp. 132.)

Viewed Without Alarm: Europe Today. By WALTER MILLIS. (Boston: Houghton Mifflin Company. 1937. Pp. 79.)

The late Justice Holmes once observed that the vindication of the obvious is sometimes more important than the elucidation of the obscure. This is peculiarly the case with the peace movement. In an epoch calling imperatively for clear thinking and decisive action, seekers after peace are everywhere unable to see the forest because of the trees. By way of clarifying their vision, Professor Eagleton, of New York University, has, with evident relish, written a simple little book which states the ABC's of the peace problem in simple language. It is apparently his hope that members of women's clubs, peace organizations, anti-war strike committees, and the like will be inveigled into perusing his pages by virtue of their engaging simplicity and charm. In view of the stubborn persistence, even in more learned circles, of numerous illusions regarding peace and

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war, it is to be hoped that this book will circulate even more widely and come to the attention of politicians and political scientists.

Professor Eagleton has written an admirable primer of the war problem. There is not much "analysis" here, as social scientists understand that term, and no effort at subtlety or profundity. But there is a beautifully lucid and cogent exposure of many current misconceptions and an eloquent and convincing plea for international organization and collective security as the only road to salvation. The author examines in turn the futility of disarmament, the irrelevant witch-hunting of the muck-rakers, the ambiguity of the pleas for "changing human nature" by education, the heroic martyr-complex of the war-resisters, the naïveté of the outlawry-of-war advocates, and the folly of so-called "neutrality." While he does not deal with war in terms of *Realpolitik*, he perceives that it can be exorcised, if at all, only by a collective system. Were ten million Americans to read these pages (instead of the few thousands who will read them), much solemn and long-faced nonsense regarding the problem would be dispensed with.

Walter Millis, on the other hand, can only breed further confusion among his readers, despite the fact (or perhaps because of the fact) that he is a past-master of the art of writing "best-sellers." Last autumn he took a trip abroad. He has seen fit to record a few rambling impressions in a feeble little volume which is eminently readable, but is relevant to nothing in particular. Mr. Millis has discovered that in Europe there are frontiers and passports and customs; that Russia is "very different"; and that German army manoeuvres are somewhat confusing to the layman. For the rest, he desires to be reassuring. There will not be any war, because "a war can hardly be planned satisfactorily without knowing what the British army, the British air force, and the British fleet will do. And nobody—least of all the British—knows what they will do. I think it is a great aid to peace." Critical readers, however, will merely think that Mr. Millis is not overly bright.

FREDERICK L. SCHUMAN.

Williams College.

Zero Hour: Policies of the Powers. By RICHARD FREUND. (New York: Oxford University Press. 1937. Pp. vi, 256, with two maps.)

In an hour of increasing crisis comes a presentation of the world scene as viewed by an Anglo-Austrian journalist with an unbiased outlook and wide sympathies. Beginning with Germany and the Baltic and girdling the globe chiefly along "the volcanic belt from Central Europe through the Mediterranean to the Far East," Mr. Freund undertakes a survey of the "driving forces" (ranging from racial and religious mysticism to the quest for trade) which impel, and condition, the behavior of different na-

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tions. Obsessed by no *a priori* ideological limitations, recognizing, but not canonizing, power politics, the author treats quite objectively and dispassionately the policies of the major powers, not *per se* but always in their intricate inter-relationships. Three chapters dealing with Germany give evidence of balance, frequently in the presence of emotionally irritating facts. Trenchantly, panoramically, Mr. Freund writes of the political conditions in the Baltic, the Danubian basin, and the Mediterranean, neatly combining geo-political and strategic aspects which ordinarily elude journalists with psychological understanding, political insight, and a wealth of economic fact. The reviewer knows of no comparably incisive account of German economic penetration of the Balkans while sanctions were in force.

An unusual feature of the volume is its salient treatment of political and strategic conditions in the Near and Middle East, recognizing the changes in the relationships of power which Arab and Indian nationalism have effected and fully tracing their international implications. This is revealing and refreshing, for somehow to American readers European international relations virtually taper off into nothingness east of Suez, while Far Eastern relationships assume no significance west of Singapore. To get the globe actually girdled, including the U.S.S.R. in its European-Asiatic significance, is no mean achievement. The Far Eastern situation is clearly depicted in four pungent chapters shot through with realities. Given existing conditions, Britain faces two, possibly three, "inevitable" wars—one with Italy (p. 126), another with Japan (167), Germany being the possible third. In the light of all this, a return to League-centered policies, together with devolution of naval control to the Dominions, offers England the surest way forward.

The place at which Mr. Freund is least successful is in dealing with "America in Dry Dock," a chapter too terse to be adequate, and suffering in consequence, from hasty generalizations and occasional factual error. The author's quotation from the Stimson note (p. 200) appears in the Argentine Anti-War Pact, while his statements on American neutrality policy in the Ethiopian war are at times far from accurate. By and large, however, he has done an excellent job in picturing the dynamic factors of domestic and foreign policy that go to make up this all too precariously situated world. *Zero Hour* is provocative, stimulating, worth while.

MALBONE W. GRAHAM.

University of California at Los Angeles.

The Shanghai Problem. By WILLIAM CRANE JOHNSTONE, JR. (Stanford University Press. 1937. pp. xi, 326.)

The status of Shanghai remains a major issue in Far Eastern politics, overshadowed as it may be at present by momentous events in the course

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of Japanese aggression north of the Yellow River. In this up-to-date account of the evolution of municipal policy and international diplomacy in Shanghai, Professor Johnstone has traced the historical development of the anomalous political régime of that city and analyzed its present problems in their international setting.

Two factors—location and security—have made this port at the mouth of the Yangtse the commercial and financial center of modern China. For the first, the foreigners are not responsible; but for the second, they can claim the credit, or could until the Japanese devastated Hangkow in 1932. What does security mean? For the International Settlement and the French Concession at Shanghai, as Professor Johnstone shows, it has meant freedom from civil wars, immunity from Chinese control and taxation, and also governing power in the hands of a propertied class sufficient to resist the latent demands of a growing prolétariat for factory legislation and costly municipal services. How such a political régime evolved is traced by the author in a series of readable chapters on the development of the international, French, and Chinese municipalities. Beginning with the indefinite legal basis laid down in the treaties of 1842–44, he describes the successive steps by which the foreign diplomats and local communities excluded Chinese authority from the foreign areas and built up their own independent agencies of government. In its essentials, the story has been told before; but it is here set forth with clarity and precision, and with an attention to the rôle of Americans in the founding of the International Settlement which has hitherto been lacking.

The latter half of the book is devoted to Shanghai's present-day problems, with special emphasis on the international régime which controls the key foreign area. In straightforward fashion, the author sketches the court reforms restoring Chinese judicial authority over Chinese nationals and foreigners lacking extraterritorial privileges, the admission of Chinese representatives to the municipal councils, the cautious experiments in public education, the unsettled controversies over factory control and the extra-settlement road areas, and the crisis precipitated by the Japanese invasion in 1932. The latter was the prelude to a growing demand by the Japanese for a larger voice in the affairs of the International Settlement. This demand has now turned the future of Shanghai into a triangular struggle between China, Japan, and the other powers—a struggle which reflects the wider conflict spread across the map of China, and, in the opinion of the author, hinges largely on its outcome.

Professor Johnstone states that his purpose is to view Shanghai primarily from the angle of Sino-foreign relations, and it is of course unfair to criticize this study for what it does not pretend to be. One may regret, however, that he did not find it possible within the limits of his study to analyze at greater length the character of municipal government

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in Shanghai in terms of class and group interests and to reveal more concretely the relation between municipal problems and policies, on the one hand, and, on the other, the changing social structure of the community, especially as regards its predominant Chinese population with its rising bankers and industrialists, its growing proletariat, and its changing social attitudes. He does characterize the régimes of the International Settlement and French Concession as run by and for foreign propertied interests, with minor modifications in recent years; but the task still remains to show fully in political terms the cross-currents of interests and ideas which make the political problem of Shanghai so much more than a frontal conflict between two, or even three, homogeneous and static national groupings.

To pursue this a little farther, one feels that the study might also have gained from greater attention to China outside of Shanghai, both traditional China and China as affected by the changes of recent years. Perhaps the problems of Shanghai would stand forth more clearly—for example, the conflict over "judicial process"—and certainly the significance of Shanghai for China would emerge in larger terms. For the important thing about Shanghai, in the long run, is the fact that through it has been funnelled a stream of Western influences revolutionizing the economic and social structure of an immense hinterland, and that within it has been created a new set of social ideals and class relationships which will exert a profound influence on the future of Shanghai and of the whole country. With no disparagement to Professor Johnstone's able study, one may suggest that this is the real Shanghai problem.

WILLIAM W. LOCKWOOD, JR.

Institute of Pacific Relations.

The United States and the Republic of Panama. By WILLIAM D. MCCAIN. (Durham, North Carolina: Duke University Press. 1937. Pp. xv, 278.)

Dr. McCain presents in this volume the results of one of the first systematic and scientific efforts to survey Panamanian-United States relations since the establishment of the isthmian republic's independence in 1903. The results are reasonably satisfactory, but one comes off from a reading of the book with a feeling of regret that the author viewed the trees to so great exclusion of the woods.

In forgivably sketchy fashion, an introductory chapter traces developments during the "four tumultuous centuries" preceding independence. Successive chapters then consider the establishment of the Taft *modus operandi* of 1904, the demobilization of the *opéra bouffe* Panamanian army, problems dealing with maintenance of public order, United States investments, the Costa Rican boundary dispute, expropriation of lands

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for canal defense, transportation and communication, Panama's part in the World War, the unratified treaty of 1926, and "Panama and the New Deal."

Instances of American private investments are listed in unnecessarily great detail. The author commits the understandable fault of proportioning the fullness of his treatment of various topics to the volume of available source materials; thus the abbreviated discussion of certain topics as they developed after the summer of 1906 reveals unconsciously that the opened State Department archives stop with August of that year. Treatment of subject-matter is disproportionate from another angle in that one or two developments are inexcusably slighted. The Root-Cortes-Arosemena agreements and the Thompson-Urrutia treaty get a total of only five lines (p. 244), although both were important chapters in the efforts to straighten out the tangled skein of relations among the United States, Panama, and Colombia. In the concluding pages, the whole problem of relations between Panama and the United States should be viewed in perspective in greater detail than has been done.

A few detailed or mechanical points are subject to criticism. One would prefer the footnotes at the bottom of appropriate pages instead of at the ends of chapters. President Roosevelt did not sign the "Spooner bill" (p. 12), but rather the *Hepburn* bill with the Spooner *amendment*. No useful point is served by the occasional retention of words or phrases in Spanish when their translation would be as simple—for example, *dominación* (p. 114), *convención* (p. 124), *buenos oficios* (p. 129), and *Corte Internacional de Justicia de la Liga de Naciones* (p. 211). Governments do not cancel the exequaturs of diplomatic agents (p. 194), but only of consuls.

The bibliography shows good and conscientious use of the conventional materials, although several secondary items of importance are omitted. One looks in vain for Arias, *The Panama Canal;* Bishop, *The Panama Gateway;* Miller, *The Isthmian Highway;* Smith, *The Panama Canal;* Williams, *Anglo-American Isthmian Diplomacy;* Hill, *Roosevelt and the Caribbean;* Jones, *The Caribbean Since 1900;* and Antonio José Uribe, *Colombia y los Estados Unidos de América.* Admiral Chester's "Diplomacy of the Quarter Deck," in the *American Journal of International Law*, would also have added to the background.

Despite the faults of the book, which reveal a certain amateurishness, the study is a useful one, and, as Professor Rippy says in his foreword, it follows "the main threads of Panamanian-American relations . . . in a definitive manner." The callous treatment by the United States of the nation whose birth she sponsored is, on the whole, well described.

RUSSELL H. FITZGIBBON.

University of California at Los Angeles.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Robert Phillips, of Purdue University, has produced *American Government and Its Problems* (Houghton Mifflin Co., pp. 813), designed as a text for colleges and "the reading public." Seeking a satisfactory compromise between functional and structural approaches, all areas of government are treated topically, but with heavy stress upon the rôle of national authority in the federal system. More space is accorded the description of governmental mechanisms than of their functioning. Against an historical background, the novel features of the Roosevelt régime are carefully presented, with a too obvious effort to remain uncommitted on controversial items. Good and bad arguments are marshalled pro and con, leaving the reader none the wiser. A unique feature of this text is its literary style. When involved details impede lucidity of expression, they are omitted. A plethora of classical allusions, witticisms, and humorous anecdotes enliven the context even when they fail to illuminate the point. Careful study of this book will probably expand the student's vocabulary, for the author is fond of a wide variety of words, occasionally employing them in unusual meanings. The general effect is to produce a lively, fascinating narrative, uncommon in elementary text-books. Entertaining description, however, may leave the reader with much interesting information but with little understanding. True of many texts on American government, one learns little of the dynamics of politics, of the social pressures, sectional interests, organized minorities, personal ambitions, and class antagonisms which determine its destinies. It is regrettable that this book, definitely superior to its predecessors in many respects, should be equally lacking in this regard.—O. R. ALTMAN.

Dwight L. Dumond's text-book history of the United States in the twentieth century, entitled *Roosevelt to Roosevelt* (Henry Holt and Co., pp. 518), is concerned mainly with economics and government, with little attention to cultural and sociological developments. Above all, it is realistically critical. Imperialists, selfish business interests, the War, the Red hunt, the Ku Klux Klan, poverty and insecurity, reactionary Republicanism—all are subjected to the historical whipping-post. One cannot help wondering what effect the study of numerous recent books like this, all battling away at big business's lack of social consciousness, will have on the future business leaders now in our universities. Possibly this somewhat partisan attack, identifying itself with Wilson's New Freedom and Roosevelt's New Deal, may go a trifle too far. Partiality may provoke an unhealthy reaction in some students. Again, Professor Dumond and the others can hardly remain true to scholarship when they

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take sides. The cause of knowledge is not promoted by calling Charles Dawes a fascist. Yet, on the whole, Professor Dumond is discriminating in his attack. He steers his course unhesitatingly 'twixt Bourbons and Crack-Pots. Certain criticisms of structure, unhappily, must be made. The book seriously lacks coherence and emphasis. A mass of declarative sentences are thrown at the reader, with nothing to draw them together. The author has failed to realize that the human mind, even of a college sophomore, demands that certain ideas stand in relief. There are few lights and shadows, and the student will suffer for it. Again, one is hard put to get a connected picture of any one topic because of the fact that the author takes his history in pinches. The labor movement is discussed separately in five different chapters and agriculture in at least four. Consequently there is no feeling of causes, sequences, and trends, which history, as distinct from mere chronicling, above all should reveal. Finally, there seems a lack of deep knowledge and research. The book is not a profound interpretation of modern America. Though greatly needed, such an interpretation is not forthcoming from this author any more than from political scientists.—JOHN THURSTON.

The *Municipal Year Book, 1937* (International City Managers' Association, pp. viii, 599), edited by Clarence E. Ridley and Orin F. Nolting, not only is larger than any of the previous volumes in the series but is distinctly better. There is a valuable compendium of statistical matter on various phases of municipal government, such as growth of cities and personnel and finance administration. No better résumé of municipal activities in 1936 can be found than that presented in Part I. The developments and trends are summarized by specialists in the respective fields. While the remaining four divisions of the book—governmental units, municipal personnel, municipal finance, and sources of information—are the same as in the 1936 *Year Book*, the material has been brought up to date and many new sections added. Problems which are receiving increased attention from public officials are emphasized. The two subjects to which the most space is devoted are finance and personnel. There is a section on financing relief and recovery which discusses the work of the various federal agencies. The developing relationships between the national and local governments are referred to in several other sections of the book—especially that on federal-city relations in 1936. In view of the disturbed conditions in the private labor field, the material on municipal personnel is of particular interest. There is a section on city-wide organizations of municipal employees. In the selection of subjects and the allotment of space to each, the editors are to be commended. The result of their efforts is a year-book which will be of great value to all persons interested in municipal government and administration.—CHARLES M. KNEIER.

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The *Reorganization and Consolidation of State Administration in Louisiana* (Bureau of Government Research, Louisiana State University, pp. 270), by R. L. Carleton, is naturally concerned mainly with affairs in Louisiana. However, a brief but careful analysis of the problems in state administrative organization and a summary of the progress made toward administrative reorganization in the forty-eight states make the book a useful addition to the general literature of state government. The facts appear to be reported reliably, although one might be constrained to disagree with some of the opinions and conclusions. Probably a more important reason for the increased cost of state administration during the past three decades than the two given (p. 12) is the increased services rendered. The major portion of the book (pp. 46–217) consists of a brief treatment of each of the 174 offices, boards, and commissions making up the state administrative organization of Louisiana. Citations to constitutional and statutory provisions and judicial decisions are given, together with a brief statement of the organization, duties, and powers of each agency. This section of the book shows evidence of much painstaking research. In Part IV, the author gives alternative plans for a complete reorganization of the state administrative system. The first, a plan of expediency, proposes only statutory changes. The second, more idealistic, would involve both constitutional and statutory changes.—P. S. Sikes.

In *Social Characteristics of Cities* (International City Managers' Association, pp. 70), William F. Ogburn has presented what he defines as a "basis for new interpretations of the rôle of the city in American life." The report presents in distilled form the results of an elaborate statistical process. The preliminary chapters are devoted to sociological data on population traits, occupations, and family life in cities, from which are drawn many observations upon the characteristics of cities varying in size. There follows an analysis of how cities compare in providing social services for their populations. Under the heading of daily living are presented many of the glaring facts accruing from the real property inventory of cities made by the Department of Commerce. Regional differences and urban resemblances are set forth. The conclusion is reached that there is a good deal of loose talk about regional differences. Actually, cities of different regions possess much in common. The social characteristics of trading centers, factory towns, transportation centers, mining towns, pleasure resorts, health resorts, and college towns are set forth. Differences were analyzed between satellite cities and average cities, between wealthy suburbs and industrial suburbs, between increasing cities and decreasing cities. The tabulation of sociological data here made available cannot be overlooked by the student of municipal government and administration.—Arthur W. Bromage.

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About twenty years ago, there appeared a treatise on police training in which the author assured all prospective candidates that if they had a thorough knowledge of Shakespeare, the second book of Blackstone's *Commentaries*, and the Bible, they might regard themselves as eminently equipped to render police service of the highest order. There is no mention of these estimable volumes in the *Yearbook of the International Association of Chiefs of Police* (International Association of Chiefs of Police, 1936–37, pp. 244), but there is much excellent material on the rôle that science may play in police administration and work. Some thirty papers by experts discuss such diverse aspects of police administration as personnel, training, scientific standards, press relations, records, traffic enforcement, and crime prevention. Perhaps the most important fact implicit in this volume is the increasingly changing point of view on the part of police executives who at long last have awakened to the fact that police work can never be regarded as reasonably successful until the field becomes professionalized. It is evident in these pages that the laboratory and trained personnel are no longer the demands of academic police experts but rather the recognized essentials of effective police administration. For those interested in the origin of police radio, the brief paper by W. P. Rutledge, formerly commissioner of police in Detroit, and at present chief of police at Wyandotte, Michigan, is worth reading, if only to see the simple beginnings of one of the greatest advances made by police in the past hundred years.—J. P. SHALLOO.

In the preface to *A Bibliography of Police Administration and Police Science* (Institute of Public Administration, pp. xv, 152), prepared by Sarah Greer, librarian of the Institute, Mr. Bruce Smith indicates the purpose and scope as including a selection of European materials of general usefulness to students of police administration and science as well as a more comprehensive selection of the American materials. There are also references to materials in periodicals, and to the writings on the subject which may be termed the classics in the field in which the interest of the contemporary student would be primarily historical. The references are organized about regional divisions, levels of government, and functional problems, and a brief selection of titles in the field of crime and criminal law is included.—JOHN M. GAUS.

Catching Up With Housing (Newark, N. J.: Beneficial Management Corporation, pp. 243) was prepared by Carol Aronovici and Elizabeth McCalmont primarily as a handbook for the use of employees of the personal finance companies engaged in the small loan business. It is the first of a series of such handbooks on various subjects, the object of which is to bring to the personnel of these companies a realization of opportunities for the rehabilitation of families with whom they come into con-

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tact. The first chapter shows the deleterious effects of poor housing and its importance as a matter of public concern. There follows a section devoted to housing facts and figures which includes statistics on incomes, rents, family budgets, and the shortage of dwellings. There is a chapter devoted to the agencies of the federal government which deal with housing; others on the history and future of housing in the United States and the relationship between housing and employment. The authors also discuss the legal and financial basis of housing, land policies, taxation, community planning, and management. The appendix contains a list of federal housing projects, a list of state enabling laws, a glossary of terms, a bibliography, and a list of housing agencies and organizations. Compilations of this kind are, of course, useful. Unfortunately, the present volume contains some slight inaccuracies which lessen its value as a source of entirely dependable information.—ELIZABETH LONGAN.

The *Fifth Yearbook of School Law: 1937* (Washington, D. C.: American Council on Education, pp. 144), edited by M. M. Chambers, presents a topical summary of the decisions of the higher courts of the respective states, as reported during 1936, in cases involving school law. The volume embraces sixteen chapters by as many different authors. Subjects considered in the various chapters include the rights of pupils and parents; certification, appointment, and tenure of teachers; creation and alteration of school districts; school corporations and officers; school contracts; management and control of school property; tort liability of school districts and school personnel; taxation and indebtedness for educational purposes; county and state school administration; state institutions of higher education; private schools and colleges; and tax exemption of educational institutions. An introduction entitled "Instruction in School Law" presents a timely survey of courses in school law offered in American colleges and universities. Recent doctoral dissertations in the field of school law are listed in an appendix. Like its predecessors, the volume will serve as a useful reference book for school officials and others interested in the legal aspects of school administration.—CLYDE F. SNIDER.

In *The City's Rôle in Strikes* (pp. 22), the International City Managers' Association has reprinted a group of articles which appeared originally in the February and April, 1937, issues of *Public Management*. The pamphlet opens with three editorials giving some points of view of the employers, of the laborers, and of the public concerning strikes. Articles by Donald C. Stone and Arnold Miles follow, upon public interest in labor disputes and upon what a strike means to the police. These set forth in a general way observations as to how public officials should acquit themselves in face of labor troubles. In a brilliant article, City Manager Henry Traxler tells of his experience in a strike in Janesville,

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Wisconsin. Lyman S. Moore, in a concluding article, makes clear the desirability of having local labor relations boards such as the Toledo Peace Board. The reprint is a timely one in this strike-bound year. It demonstrates the difficulties that cross the path of public management when labor and capital clash on a broad front, with both old and new methods in play.—ARTHUR W. BROMAGE.

Constitutional Problems of Tennessee (University of Tennessee, Division of University Extension, pp. 115), prepared by the department of history and political science and the school of commerce of the University of Tennessee, purports to be a study of specific problems of state government in Tennessee as compared with problems of state government in general throughout the Union. The announced purpose of the study is "to provide voters with information that will aid them in deciding whether any constitutional changes are required, and if so, the nature of the changes that should be made." The authors make no claim to originality of treatment and frankly admit that some topics have been omitted entirely and others treated in a summary manner. Although the education of the voters of Tennessee is a most laudable aim, it can hardly be consummated by a summary of "the eternal verities" found in most texts on state government and a digest of certain portions of the state constitution. An electorate with a tobacco-spitting complex and a homespun philosophy is not likely to be convinced by the pious homilies of the professors at the state university.—ROBERT J. HARRIS, JR.

A Regional Redistricting Plan for the State of Utah (Brigham Young University Studies, 1937, No. 5, pp. 59), by George H. Hansen, is condensed from a W.P.A. research project in "The Human Geography of Utah." The plan presented would substitute six districts for Utah's twenty-nine counties, in order that county units may conform to natural geographic areas, and to population and trade centers. The three to nine administrative districts of nine different governmental agencies are shown by maps and considered in relation to redistricting. Supporting data on population and taxation are presented in tables. The usual arguments regarding county consolidation for a motor age are reiterated. Though the writer wisely awaits reliable factual data before estimating probable savings, he unwisely calls "conservative" an estimate by various state authorities of twenty-five per cent. Reliable data for other states show more meagre savings. Quotations from doubtful authorities also detract from the scholarliness of the monograph.—WILLIAM L. BRADSHAW.

The principal changes introduced by Professor Oliver P. Field in the second edition of his well-known *Selection of Cases and Authorities on*

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Constitutional Law (Callaghan and Co., pp. xxxvi, 1097) are, first, the omission of expository matter included in the first edition; second, employment of the space saved in this and other ways to present, along with "the famous old cases of our constitutional law," a liberal selection of cases decided since the first edition was published in 1930; and third, a considerable rearrangement of the sequence of topics taken up. The chief additions are, of course, cases involving aspects of the New Deal—cases chosen, it is rightly believed, to include only those that are fairly assured of lasting significance. Professor Field concludes his new preface with the interesting observation: "One criticism of the first edition I have been unable to meet: I have been unable to select cases that show the subject of constitutional law to be as static as some critics seem to have thought it to be."—F.A.O.

Oscar Doane Lambert's *Presidential Politics in the United States, 1841–1844* (Duke University Press, pp. ix, 220) is a flimsy historical account of presidential politics from the time of the election of William Henry Harrison up through the campaign of 1844, based on materials gathered from official documents, manuscripts, biographies, and newspapers and magazines of the period. The author describes John Tyler's succession to the presidency, his conflict with distrustful and unsympathetic party leaders in Congress and in the cabinet, and the struggles of parties and leaders to win the presidency in 1844. The book is poorly written, contains an absurd index, numerous incorrect page citations, and many quotations in which words have been either omitted or included improperly, or sentence structure altered, apparently to suit the author's fancy.—ALDEN L. POWELL.

Students and teachers of state government in the high schools and colleges of the state, as well as the general reader, will find *The State Government of Indiana* (Principia Press, Inc., pp. vi, 120), by Pressly S. Sikes, both a readable and an accurate summary of the outstanding features of their government. Following a standard chapter sequence, and concerned largely with factual material, the volume should be regarded as a significant contribution to the literature in its field. Many students will be attracted to the book because of the competent description of the administrative reforms introduced during Governor McNutt's term of office. Since this is the first in a projected series of studies of "governmental organization and administration in Indiana"—a field much neglected in the past—it is to be hoped that the terse style and interesting presentation of this volume will be continued in succeeding ones. There are several charts and a selected bibliography.—HARRY W. VOLTMER.

The Bureau of Public Administration at the University of California has published, in mimeographed form, *Training for Public Service;*

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A Bibliography (pp. 48), compiled by Dorothy Campbell Culver. A very useful list, running to more than five hundred items, is arranged in four parts, relating respectively to training for public service in the United States, training for public service in Europe, schools for training for public service, and training for specific types of public service.

FOREIGN AND COMPARATIVE GOVERNMENT

An author who seeks to present an adequate treatment of the governments of England, France, Germany, Italy, and Russia in approximately five hundred pages has set himself a difficult task. The limitations which must necessarily be observed in such a book present many acute problems of selection. In his *Comparative Major European Governments* (Farrar and Rinehart, Inc., pp. ix, 537), Professor J. G. Heinberg has attempted this task. In writing the book, he discarded "the conventional country-by-country arrangement in favor of a functional approach." Useful as the so-called functional approach may be, one might question the desirability of following this procedure in the book under review. For reasons which will appear, the volume could hardly be used by advanced students of foreign government. If, on the other hand, it is intended for introductory purposes, there is the danger that beginning students will not have the background necessary to obtain the proper perspectives; for a mass of diverse material passes before the reader in a kaleidoscopic fashion. Notwithstanding the comparative brevity of the book, the author covers all of the more important political institutions in the five countries named and adds other material usually absent in text-books on comparative government. There are chapters on the constitutional development of the countries treated, on constitutions, on titular executives and secondary chambers, on political parties, on electoral systems, on legislation, on administration, on local government, on economic control and the social services, on finance, on courts, on individual rights, and on foreign, imperial, and colonial relations. Unfortunately, this wide range of subject-matter is very often sketchily dealt with. In too many instances, the book becomes a mere recitation of descriptive material with little or no attempt at analysis or interpretation. Thus the constitutional developments in England, France, Germany, Italy, and Russia are described in 34 pages; local administration and government in these five countries is dismissed in 30 pages; and the complexities of the foreign, imperial, and colonial relations of the five powers are treated in 27 pages. Repeatedly, the author might better have paused for elaboration than proceeded to another subject. For example, in speaking of the adoption of the electoral law of 1923 in Italy (p. 64), he writes that "in spite of considerable opposition, the bill incorporating the proposed changes secured the approval of the Chamber by a two to one majority." Nothing

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is said as to what parties supported the bill and why their support for this extraordinary piece of legislation was forthcoming. Again (p. 83), was von Papen's resignation merely "a strategic move?" What preceded the negotiations (p. 84) between von Hindenburg and von Papen and between von Hindenburg and Hitler in January, 1933? Can the subject of advisory economic councils be dismissed in but a few paragraphs? The Economic Advisory Council in England is summarily dealt with (p. 287) as follows: "Apparently, the English experiment, the National Economic Council, has been a rather complete failure." Professor Heinberg's book is readable and very well written. In the opinion of the reviewer, however, he has attempted to cover too much in so small a book. —HARLOW J. HENEMAN.

Those Englishmen who strongly oppose Mussolini's adventure in Ethiopia should inspect more carefully the administrative programs and techniques of their own government in Africa. George Padmore, in his *How Britain Rules Africa* (Lothrop, Lee and Shepard Co., pp. 402), severely indicts His Majesty's Government for policies which for decades have suppressed the natives under its control. Taking up in turn each British dominion, colony, protectorate, and mandate in Africa, excluding Egypt and the Sudan, the author lays bare the oppressive practices which, designed at first only to maintain the social and political superiority of the whites, are coming to mean economic strangulation for the blacks. For the political scientist searching for pictures of constitutional relationships or governmental forms, this book will be of little value. Only in one chapter (XII) can one discover an institutional treatment of the problem presented by the title. However, for those interested in the actualities of administration, or "practical imperialism," this book performs a service. Students of African politics have long been acquainted with the various forms that racial discrimination has taken: hut and poll taxes, forced labor, segregation, expulsion from the land, "pass laws," and denial of educational advantages. But the account presented by Padmore is more integrated and complete than those to be found in standard works on Africa. Each British possession, from Uganda and the Gold Coast, the best governed, to Kenya, the worst administered, is analyzed in its economic and social aspects, with the conclusion always the same: Great Britain has sold the natives down the river. The position of the blacks has been made more acute by the development of finance capitalism which, working hand in glove with colonial administrators, has carried to completion public works projects benefiting directly those in commercial and financial control, but for which the natives are taxed. Taxation serves a double purpose. While paying for railroads (rarely constructed through the native reservations) and power plants, it forces

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the natives into the towns and mines where they work for starvation wages. Unionization is suppressed, not only by those in power but also by white labor whose wages and working conditions are maintained at a much higher level, partly to preserve the myth of white superiority and partly to preclude the merging of the black and white proletariat. Padmore, a native of Africa, concludes that no remedy will be forthcoming from London: "The British Colonial Office is an institution which does not change, regardless of the political party in office. And this is the reason why Tory-minded governors can afford to sabotage any reform instituted by a Labour government without fear of losing their jobs." If any reconstruction is to take place, it must come from the development of a native African nationalism and from a realization on the part of British and world working classes that they will never be able to emancipate themselves without the fraternal support of colonial and subject peoples. There are times when the reader becomes a little impatient. Padmore's native bias is always in evidence, and his method of presentation entails considerable repetition. Nevertheless, for those who grow weary of Empire apologists, this work provides a salutary respite.—VERNON A. O'ROURKE.

One of the most realistic and refreshing works on English politics that has appeared in many a day is S. Maccoby's *English Radicalism, 1832–1852* (London: George Allen and Unwin, Ltd., pp. 462); and it is gratifying to learn that two volumes carrying the study further are projected. To be sure, the well known work of Elie Halévy covers the period with a thoroughness never previously attained; but, as Mr. Maccoby justly remarks, even that pioneering treatise leaves some questions unanswered and others unasked. After years of laborious research in a multitude of more or less out of the way materials—minor newspapers, records of conventions and meetings, correspondence, parliamentary petitions, and other sources hitherto largely unexplored—the author addresses himself to a history and interpretation of the reforms achieved in the period covered, not as a matter of cabinet decisions and parliamentary enactments, but as the outcome of "pressures from without;" and included in the sweep of his study is the whole complex of "reform" and "radical" proposals of the time, whether ever achieved or not. He shows how when the outside pressures became irresistible, cabinets, whether Liberal or Conservative, systematically planned sedatives in the form of legislative compromises on the most modest lines possible; how further rigid safeguarding for protection of "the settled institutions of the country" was likely to be insisted upon by the ultra-conservatives in the House of Lords; and how after the legislation was passed so-called "public opinion" in the shape of such organs as the *Times* habitually played up, for popular

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effect, the changes of a "great liberal and progressive era" which English political genius was able to bring about peacefully from year to year. Altogether, the volume comes closer to the American type of "pressure politics" studies than anything heretofore published in a European country.—F.A.O.

Among the many current books on Mexico, few have scholarly character; but among these few, Eyler N. Simpson's *The Ejido: Mexico's Way Out* (University of North Carolina Press, pp. 849) takes high rank. The author is frankly sympathetic with the revolutionary land program, but in his analyses states impartially both its weak and strong points. Others have set out the terms of the new land laws and have expounded the "spirit of the revolution." Mr. Simpson does a much greater service by giving case studies of the communities set up under the laws and descriptions of what the village organizations actually accomplish. He analyzes also the abuses which are never avoidable in so radical a remoulding of the system of real estate tenure as that which Mexico is carrying through. Land legislation is reviewed through 1934, since which time the program has become markedly more radical, though the end sought, to give land to the landless, remains unchanged. The social ambition of the revolution is stressed rather than its financial problems and its immediate economic consequences. He believes that the land program may be a part of a movement to create for the people a better mode of life than they have known, and even "a better life than has yet been achieved . . . perhaps in any part of the world." Along with this development he thinks that there should go an evolution of Mexico toward a new industrialization, which indeed is already "impending." Development of heavy industry is unlikely, but the transforming industries offer great opportunity for diversification. In the long run, exploitation in small plots and small factories are what Mexico should seek. On these bases, by the adoption of modern techniques, Mexico can win a better place among the nations of the machine age. That belief in success demands a number of assumptions, the author frankly admits. Among them are the adaptability of the Indian to the life of the modern world, the ability of governmental agencies to lead him into the competitive system of our times, and finally the adequacy of Mexican resources to make possible the higher standard of life sought for its present population and for that more numerous people which is coming into being.—Chester Lloyd Jones.

The Political Principles of Some Notable Prime Ministers of the Nineteenth Century (London: Macmillan and Co., pp. vi, 300), edited by F. J. C. Hearnshaw, consists of eight lectures delivered at King's College, University of London, by H. W. V. Temperley, Sir Charles Oman, Sir

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Richard Lodge, Philip Guedalla, W. F. Reddaway, F. J. C. Hearnshaw, Ramsay Muir, and C. H. K. Marten. The subjects of the lectures are Canning, the Duke of Wellington, Sir Robert Peel, Lord Palmerston, Lord John Russell, Disraeli, Gladstone, and the Marquess of Salisbury. The editor remarks, in a short introductory note, that it will be found that the different lecturers have interpreted the expression "political principles" very variously. The extent of treatment also varies from fourteen pages on Canning to sixty-two on Sir Robert Peel. In general, the essays are informative and very readable biographical sketches. The volume was first printed in 1926, and it is to be regretted that the decade that elapsed before the second printing did not produce a thorough introduction, an adequate summary, a bibliography, and an index, all of which are lacking.—J. G. HEINBERG.

Land Utilization and Rural Economy in Korea (University of Chicago Press, pp. xii, 302), by Hoon K. Lee, is one of a group of studies of land utilization made for the Institute of Pacific Relations. It measures up to the high standard set in the Institute's publications, throwing much needed light on the Korean economy as it has developed under Japanese control. For the political scientist, its particular interest lies in the data which it provides for judgment as to the benefits which Japan has conferred on Korea since the annexation. While the general backwardness of conditions, as revealed in the study, cannot be ascribed to Japanese rule, it is made clear that Japan has not materially improved conditions for the Koreans. The detailed character of the study is indicated by the presentation of 132 tables and 12 maps and charts, prepared partly from official compilations and partly from "sampling" studies made by the author.—HAROLD M. VINACKE.

As an understanding of the world scene becomes more important in high school instruction in history and the social studies, teachers and students are finding Frank Abbott Magruder's *National Governments and International Relations* (Allyn and Bacon, pp. xiv, 596, 36) useful and reliable for text or reference purposes. The new edition (1936) is sufficiently revised to bring the treatment of changing governments up to date. The scope and balance of the text are admirable, with eight out of twenty-nine chapters devoted to problems of world organization and international relations. In a later revision one would welcome a new chapter on the constitution of the British Commonwealth of Nations.—BURR W. PHILLIPS.

INTERNATIONAL LAW AND RELATIONS

Although *The Law of Peace* (London: Macmillan and Co., pp. 261), by the late C. van Vollenhoven, is a translation of a work first published

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in 1932 (*Du Droit de Paix: De Iure Pacis*. The Hague: Martinus Nijhoff), the validity of its observations on the study and practice of international law has not been lessened by the events of the past few years. No writer has seen more clearly or stated more courageously the basic defects of the present system of international law. The law of nations from Vattel to the present is characterized as "a nominal law of peace, exacting in character, elaborated in detail, full of celestial principles and unctuous rhetoric, but one that is rendered utterly futile by the reservation, ceaselessly reiterated, that it is for the sovereign states to judge the extent to which those principles and that rhetoric shall bind them in the sphere of reality" (p. 108). The science of international law, far from pointing the way to reform, has failed to supply the theoretical foundation for the scanty positive results which have actually been achieved. It has been "a servile science of jurisprudence, *ancilla potestatis*, instead of directing attention all the time to the shortcomings of a 'law' possessing no sanctions or guarantees, and instead of cleaving to a man like Grotius who had the courage to face up to the truth, contracted the habit of pleading that a law of peace which is continually ignored was none the less a 'law' of spotless character and beyond reproach . . . " (p. 135). Peace must be organized, and "any organization which is not backed by force is valueless" (p. 188). It can be achieved only through the implementation of the preventive powers under Article XI of the Covenant through an international police force. The tone of the work is one of present pessimism tempered by a confident optimism for the future. The simplicity and clarity of the author's exposition cannot wholly conceal his encyclopaedic historical and legal learning.—LAWRENCE PREUSS.

To the student of eighteenth-century English and Chinese economic and cultural history, Earl H. Pritchard's second study in the field, entitled *The Crucial Years of Early Anglo-Chinese Relations, 1750–1800* (Research Studies of the State College of Washington, Vol. IV, Numbers 3–4, September and December, 1936, Pullman, Washington, numbered pages 96–442) is of far greater value than the length of this note might appear to imply. An introductory statement regarding history and relativity, calculated to cause gnashing of teeth on the part of certain historians and social scientists, is followed by discussion of cultural difficulties in the relations of China and the West, a résumé of Anglo-Chinese relations prior to 1750, and a statement concerning the crucial significance of the ensuing fifty years. Then follow admirably clear accounts of the Chinese government's legalization and fixation of the trading system at Canton, 1751–61; of the East India Company's trade with China, 1760–1800; and of private, country, and foreign trade and the struggle for control of the China trade during approximately the same period. Foundation or back-

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ground analyses are followed by an account of the results, namely, preparations for and sending of the abortive Cathcart embassy (1787–88) and the fruitless Macartney embassy (1792–93), and a critical consideration of the reasons for the failure of the latter. Based almost wholly upon manuscript materials at the India Office and in the Wason collection on China at Cornell University, the accounts of these embassies are the most exhaustive yet published and constitute a definitive study. Valuable statistical materials relative to the goods imported into, and exported from, China by the East India Company, 1760–1800, are contained in twelve appendices. A twenty-eight page bibliography and an excellent index and glossary complete a first-rate study.—HARLEY F. MACNAIR.

In his *The Far East in World Politics; A Study in Recent History* (Clarendon Press, pp. vii, 276), Mr. G. F. Hudson, of Oxford University, has undertaken to provide "a short historical introduction to the present international situation in the Far East." Disregarding the domestic affairs of the countries concerned (except in respect to the "march" of the Kuomintang in China and the responses of China and Japan to Western pressures in the nineteenth century), the author traces, in chronological narrative, the unfolding panorama of international events in Eastern Asia from the visits of the early Western traders to the beginning of the Japanese military drive in Manchuria in 1931. What has happened since the last-mentioned occurrence, belonging to "contemporary" history, is assumed to be sufficiently familiar to the volume's readers. Although engaged mainly in telling a story, Mr. Hudson contrives to pack a good deal of interesting interpretation into his few small pages, as, for example, when he argues in his concluding chapter that without economic sanctions applied by the League and the United States Japan could not have been stopped in Manchuria in 1931; that such sanctions could hardly have been made effective without the coöperation of Soviet Russia; that such coöperation "would not have been welcome to the other Powers opposed to Japan;" that the crushing of Japanese power in Manchuria must have meant "the return of Russia and a new upsetting of the trembling balance of China's domestic politics, with world-wide repercussions;" and finally, that how, in such a case, the League and the United States could deal with a Soviet Russia no longer held in check by Japan constituted a dilemma to which there was no solution. As for the four Great Powers sitting in judgment at Geneva—Great Britain, France, Fascist Italy, and Nazi Germany—"What a quartet to apply collective security! What solidarity, what perfection of mutual trust, what disinterestedness of devotion to the reign of law, what capacity for harmonious coöperation!" Small wonder that the Japanese militarists were unimpressed, and saw the way clear to play the lone hand of recent days in Far Eastern politics!—F.A.O.

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Although, as a matter of political fact, the Free City of Danzig now has the status of a provincial branch of Nazi Germany, it still offers its separate and peculiar problems of constitutional, administrative, and international law. In the second volume of *Danziger Staats- und Völkerrecht* (Danzig: Verlag Georg Stilke, pp. 392), Dr. Georg Crusen, retired (because of age) chief justice of the Free City, and Dr. Hermann Lewinsky, a practicing attorney, supplement the collection of laws, treaties, and decisions of Danzig courts and League of Nations organs issued in 1927 by Drs. Lewinsky and Wagner.[2] Contrary to the arrangement of the earlier book, lack of space has now forced the substitution of mere excerpts and references for the complete texts in the case of some treaties and legal decisions. The extensive and elaborate table of contents has most convenient references to the corresponding sections of the first volume. The editing has been done in a very thorough manner, and the index is good. This book is supplemented by the latest additions to two important series: (1) *Zusammenstellung der zwischen der Freien Stadt Danzig and der Republik Polen abgeschlossenen bedeutsamen Verträge, Abkommen und Vereinbarungen* (Vol. XIII, 1935, pp. 299), and (2) *Décisions du Haut Commissaire de la Société des Nations dans la Ville Libre de Dantzig* (Vol. XII, 1933, pp. 73), both published under the auspices of the Danzig Senate and containing the official texts of treaties and agreements between Danzig and Poland and decisions of the High Commissioner of the League, respectively. For studies relating to Danzig's tie-up with the League of Nations, *Danzig vor dem Völkerbund, Verhandlungsberichte und amtliche Schriftstücke* (Vols. I to VIIb, mimeoprint, published between 1929 and 1936 under the auspices of the Senate of the Free City) offers complete collections of official League reports, discussions, and other documents concerning Danzig matters before the League Council since 1922 (in German translations, with marginal references to the corresponding official texts in French and English). This collection, intended for the use of Danzig government officials, is a very helpful guide through the maze of League of Nations material on Danzig, especially as each volume is carefully indexed.—JOHN BROWN MASON.

The twelfth edition of the *Armaments Year-Book* of the League of Nations (Geneva: League of Nations, 1936, pp. 1129) conforms in the main to the scheme of presentation in previous volumes. Within the limitations imposed by available data (which are woefully incomplete in the case of Germany, for example), detailed information on sixty-four countries (including their colonial forces) is compiled under four heads: (1) Land Army, (2) Air Force, (3) Navy, and (4) Expenditures on National Defense. In most cases, the figures come down to June, 1936, while

[2] See this REVIEW, August, 1929.

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estimates for 1936–37 are presented wherever possible. Two valuable annexes have been incorporated into the volume. The first contains the text of all disarmament treaties and conventions concluded since 1815, the latest being the London Naval Treaty of 1936 and the Montreux Straits Agreement. The second annex consists of recapitulatory tables showing the chief characteristics of armies and navies, the age distribution of the male populations of the various countries, and the aggregate world military expenditure from 1925 to 1934, in gold dollars. The information on war materials to be found in earlier volumes is omitted, the reader being referred for it to the *Statistical Year-Book*. Nor is any attempt made to compare arms expenditure by countries. This is a matter for regret. It should not have been impossible for the League statisticians, with the aid of index numbers and exchange rates, to surmount the difficulties caused by price changes and currency fluctuations and devise a usable standard of comparison.—WALTER R. SHARP.

The first item in the eighth volume of the *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860*, relating entirely to Mexican affairs (Carnegie Endowment for International Peace, pp. liii, 1006), deals with the desire of the Americans for Texas. The 642 documents which follow are all concerned with one or another phase of this all-consuming objective. The formal communications between the nations are characterized by oleaginous assertions of great friendship and high ideals on the part of the Americans and of unctuous protests in an aggrieved spirit by the Mexicans. Reports of American ministers to the State Department reveal that the American emissaries—Anthony Butler, Powhatan Ellis, Waddy Thompson, Wilson Sherman, John Slidell, and Nicholas Trist—overlooked no opportunity to press American claims, protect American citizens, and engage in dark intrigues to obtain land cessions from a distressed neighbor. At the same time, the documents show the inefficiency, corruption, and procrastination of the Mexican politicians, who used the American and Texas questions to gain and retain office and stirred up the local jingoes to demand war. Given such conditions, it is apparent that the Mexican War was truly an "irrepressible conflict." The documents of this volume carry the story to June, 1848. Volume IX in this invaluable and well-edited series will contain the correspondence from 1848 to 1861.—W. B. HESSELTINE.

The distinction of being the first systematic and the most complete study of the post-war policy of Czechoslovakia belongs to Dr. Felix John Vondracek's *The Foreign Policy of Czechoslovakia, 1918–1935* (Columbia University Press, pp. 451). By utilizing the source and secondary material, the book records, step by step, various nuances of the foreign policy of Prague. Those who like their history seasoned with a philosophical approach will not find much of it in the work, and although the

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author has failed to achieve a penetrating imaginative analysis of the already available facts, the book has a quality, and, despite its apparent lack of distinction, carries a punch. A good bibliography and an index add to the value of this good historical chronicle, presented in an admirable spirit of impartiality.—J. S. ROUCEK.

International Law Situations; With Solutions and Notes (U. S. Govt. Printing Office, pp. viii, 134), the thirty-sixth annual volume in a series distinguished for its practical objectives and for the careful preparation given by Professor George Grafton Wilson, deals instructively with groups of questions relating to (1) vessels and neutral ports, (2) action during civil strife, and (3) aircraft and hospital ships. Justification for effort to set forth admittedly imperfect rules of international law touching neutral rights and duties is suggested in the statement (p. 3): "It may be much more important that some rules of conduct which are generally accepted be agreed upon in advance, though these are not ideal, rather than that no agreement exist upon any aspect of a subject, and the whole matter be the subject of controversy in a time of crisis when any agreement even upon minor points is difficult."—ROBERT R. WILSON.

Dr. Mahmud Husain's *The Quest for Empire; An Introduction to the Study of Contemporary Expansionist Policy of Japan, Italy, and Germany* (Dacca, India: Asutosh Press, pp. 240) represents an attempt by a reader in modern history at the University of Dacca to interpret the motives, policies, and techniques of the principal so-called "have not" nations in their efforts to gain—or regain—empire. The explanations of expansion given both by the geopoliticians and the historical materialists are properly rejected as "one-sided;" but one looks in vain in the author's pleasantly written but rather superficial chapters for any explanation that is more satisfying. The book is too largely historical and factual to offer more than an outline from which a serious study might conceivably be launched.—F.A.O.

In a pamphlet entitled *The Struggle for Security in Europe* (Southern Methodist University: Arnold Foundation Studies in Public Affairs, Vol. V, No. 2, pp. 46), Professor J. Linius Glanville develops the thesis that, notwithstanding past lack of confidence of European nations in devices for collective security, the basic political problem of that section of the world today is precisely that of organizing such security. With the weakening of the post-war French system of alliances—and of the League, surely it might have been added—Europe finds itself at present without an axis of political control or a dominant cohesive force.

POLITICAL THEORY AND MISCELLANEOUS

The growth of interest, in recent years, in legislation concerning consumers' coöperatives and in the consumers' coöperative movement gener-

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ally is reflected in *Consumers' Coöperative Statutes in the United States* (Consumers' Project under Supervision of the U. S. Department of Labor, 1936, mimeographed, pp. 186), which is a useful compilation of the statutes under which consumers' coöperatives may be organized in the various states; and in a book designed to give some account of the history of consumer coöperation and a philosophy of the movement, and entitled *The Decline and Rise of the Consumer* (Appleton-Century Co., pp. xx, 484), Dr. Horace M. Kallen finds in the life of the consumer coöperative, and the implications of the movement, the most adequate opportunities for the development and defense of a democratic and individualistic society as against one in which the emphasis is on an abstract conception of the "economic man" and "producer." The first five chapters (Book I) are given to an interpretation of medieval and modern history from this point of view, namely, that the basic and primary interest of the consumer as the user of goods and services has been distorted by the pressures and influence of the organized producers. Book II contains a particularly useful account of the origins of the consumer coöperative movement in Britain, and especially in this country. This latter material is particularly interesting, and there are many sketches of those contributing to the development of various coöperative enterprises. The concluding book presents discussions of major problems and aspects of the movement, and its implications in social theory. For this latter point, the student of political thought will find the volume especially useful. While it does not reach the level of quality found in George Russell's *The National Being*, which remains the outstanding classic in political theory in the past thirty years so far as the conscious effort to relate the problems of both urban and rural society are concerned, it does have a great value in introducing the student of politics to an aspect of social organization, and of values and outlook, which has been neglected, and which is now winning more attention.—JOHN M. GAUS.

A number of interesting articles that relate to social planning have been collected and edited by Findlay Mackenzie in *Planned Society* (Prentice-Hall, Inc., pp. xxvii, 989). The book is divided into sections on the types of social control characteristic of earlier societies and of the national state, on various areas of economic activity such as land use, prices, and credit, and on over-all systems of economic planning and their implications, including brief accounts of techniques employed in fascist and communist societies. While there is some treatment of the political and administrative aspects of planning involved in the special fields in systems of representative democracy, it would have been useful to have had some account of the concrete contributions which have come from city and regional planning where the problems and possibilities in the use of various techniques are sharply defined, and from the evolution

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of internal planning techniques instigated by Taylor and other contributors to the science of management. Much light is thrown on the general problems of planning also by war planning, from which so much of the recent development has received impetus and suggestion. There is a useful bibliography; Lewis Mumford contributes a foreword; and the editor furnishes a general introduction and introductory notes to the various selections. The book should be useful as a source of supplementary readings for students of administration and contemporary political theory.—JOHN M. GAUS.

Competition and Coöperation (Social Science Research Council, pp. viii, 191), by Mark May and Leonard W. Doob, and *Memorandum on Research in Competition and Coöperation* (Social Science Research Council, pp. 389), by Mark May, Gordon Allport, and Gardner Murphy, should be of considerable interest to students concerned with behavior in situations involved in the processes of governing and being governed. The first volume is a printed report of the Council's Sub-Committee on Competitive-Coöperative Habits. It relates "coöperation and competition to the wider field of personality and culture," presents "a tentative orienting theory of coöperation and competition," "organizes existing knowledge that is relevant to coöperation and competition," and selects "a few promising research problems to be reviewed from the standpoint of existing knowledge and techniques and possible future developments." The authors express the hope "that the logical scheme presented, based on both inductive and deductive processes, will prove useful in the systematization of the social sciences and in their laudable quest to become truly scientific." The second volume is a mimeographed report presenting "an interpretative summary of research literature on the subject, a list of research problems drawn from the material examined, and a selected bibliography." Aside from the summary by the Sub-Committee, it is largely the work of the Sub-Committee's research assistants. These subsidiary reports deal with "Coöperative and Competitive Habits of Children," "Quantitative Studies of Coöperative and Competitive Behavior and Attitude in Adults," "Sociological Studies of Coöperative and Competitive Behavior," "Studies of Economic Coöperatives," "Studies of Social and Economic Coöperation and Competition in Russia," "Coöperative and Competitive Habits and Motives as Revealed in Life History Documents," and "Comparative Studies of Coöperative and Competitive Behavior in Primitive Culture." The Sub-Committee of the Council has performed a most useful service for those working toward a more explicit and precise political science.—HERMAN C. BEYLE.

Education Against Propaganda: Developing Skill in the Use of the Sources of Information about Public Affairs (Elmer Ellis, ed., Seventh Yearbook,

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1937, The National Council for Social Studies, pp. viii, 183) is designed "to aid in the development of the young citizen's skill in using the easily available sources of information regarding public affairs, and in the enrichment of the social-studies teacher's knowledge in the field of public opinion." The content and pedagogical format of the volume are excellent. It should prove a most useful teaching device for both formal and informal education. "The first eight articles were planned to acquaint teachers with basic concepts." Most of them do fundamental service in marking out objective, practical, and teachable distinctions between propaganda and education. Doubtless many instructors will ask permission to use the sections on the newspaper by Harold D. Lasswell, Ralph D. Casey, O. W. Riegel, and Roscoe Ellard. The general article by Harwood L. Childs and those by Edgar Dale, Hadley Cantrill, and Howard K. Beale on propaganda in the movies, over the radio, and in the schools should also be useful for discussional purposes. "The remaining articles were selected as examples of good practice and theory at present available for use in schools, in the hope that they would suggest procedures to other teachers, and stimulate experimentation with other and, perhaps, more effective means of teaching." They present stimulating suggestions of both qualitative and quantitative analyses possible at the several student levels considered.—HERMAN C. BEYLE.

A generation of monographic research on the Civil War and its aftermath has resulted in extensive revision of most of the earlier concepts concerning the nature, the events, and the significance of the conflict. Professor J. G. Randall's *The Civil War and Reconstruction* (D. C. Heath and Co., pp. xvii, 959) is the first effort by a competent scholar to recast the entire social, political, economic, diplomatic, and military aspects of the struggle in the light of modern researches. Sedulously avoiding adherence to any partisan interpretation, the author refuses to accept the glib explanations of "economic determinism" and believes that the war was not an "irrepressible conflict." Especially noteworthy is the attention given to psychological forces of propaganda, educational movements, and intellectual developments during the war. The volume is invaluable to the student, while its highly readable style and its excellent assortment of illustrations entitle it to a wide circulation among non-professional readers.—W. B. HESSELTINE.

In *Our Rude Forefathers; American Political Verse, 1783–1788* (The Torch Press, pp. 274), Louie M. Miner has brought between two covers the controversial rhyme of a significant epoch in American political development, the so-called "critical period." The volume is important to students of political literature, if for no other reason, because it demonstrates the dithyrambic drivel in which propaganda found expression.

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This stuff makes the founding fathers seem more heroic because they survived it. Doggerel of this character must have made a condition of illiteracy well-nigh beatific. The author's industry is commendable, but his suffering in collecting such material must have been "cruel and unusual." Anyone not a candidate for martyrdom should refrain from reading the book. Emphatically, the fault lies not with the compiler but with the "muse" of our fathers. We doubt if the patriotism of the D.A.R. or of the devotees of the constitutional cult could cope with verse of this character.—JASPER B. SHANNON.

Mr. W. F. R. Hardie belongs to the growing counter-revolution against the anti-transcendentalism of science and the modern world. The audacious attempt to bring even Platonism down to earth is altogether too much for him, and in his *A Study in Plato* (Clarendon Press, pp. xiii, 172) he argues, first, that Plato had a system, and second, that it was essentially a transcendentalism; hence Plotinus and the neo-Platonists were correct in their interpretation. Furthermore, contrary to the modern temper, transcendentalism is a thoroughly intellectually respectable doctrine. Quite apart from the merit of Hardie's position, the book is impressive and delightful because of its close and scholarly reasoning.—LESLIE M. PAPE.

In pursuance of its interest in promoting civic forums, the Office of Education in the Department of the Interior has issued an extremely convenient booklet entitled *Public Affairs Pamphlets; An Index to Inexpensive Pamphlets on Social, Economic, Political, and International Affairs*, revised to February, 1937 (Govt. Printing Office, pp. 83). In addition to an index of authors and another of titles, there is a formal bibliography, arranged by organizations putting out the pamphlets, and running to a total of 660 titles. Many of the publications enumerated are, of course, superficial and ephemeral, but the increasing output of those having solid worth amply justifies the present finding list.

The fifth and final volume of Ellis Paxson Oberholtzer's *A History of the United States Since the Civil War* (Macmillan Co., pp. xii, 791) opens with the election of 1888 and closes with the accession of Theodore Roosevelt to the presidency in 1901. The general course of the country's affairs continues to be narrated as in preceding volumes, with emphasis chiefly on political history, but with an interesting hundred-page concluding survey of "material progress and social reform" during the period covered.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY E. S. WENGERT

University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

Gabriel Almond; Ph.B., Chicago, 1932. Political Participation in New York City. *Chicago.*

Sigmund S. Arm; B.S.S., College of the City of New York, 1932; A.M., Columbia, 1935. Influence of Locke and Montesquieu on the Early State Constitutions. *Columbia.*

Charles C. Barrell; A.B., Hampden Sydney, 1931; A.M., Virginia, 1932. Functional Representation—its Theoretical and Practical Problems. *Ohio State.*

Donald G. Bishop; A.B., Akron, 1928; A.M., Princeton, 1929. A Suggested Psychological Approach to the Problem of Peace. *Ohio State.*

Hugh A. Bone; A.B., North Central College, 1930; A.M., Wisconsin, 1935. Political Education in the United States. *Northwestern.*

Dorothy Berg; A.M., Columbia, 1931. Outbreak of the World War; A Comparison of the Facts with the Newspaper Stories of the Outbreak of the War—1914. *Columbia.*

Mary Capan Davis; A.B., Radcliffe, 1934; A.M., *ibid.*, 1937. The Nazi Principle of the Führerstaat and Its Background in German Thought. *Radcliffe.*

Marie Louise Degen; A.B., Goucher College, 1935. The Pacifist Ideas and Activities of the American Branch of the Women's International League of Peace and Freedom. *Johns Hopkins.*

Emmett E. Dorsey; A.B., Oberlin, 1927; A.M., Columbia, 1932. A Comparative Study of Negro Leaders. *Columbia.*

Kermit Eby; A.B., Manchester, 1927. The Attitude of Japan Toward Internationalism. *Chicago.*

Harold L. Elstien; A.B., Syracuse, 1934. The Psychological Reinforcement of Democratic Institutions. *Chicago.*

Dorothy Fosdick; A.B., Smith, 1934. Liberty as a Protean Concept in Contemporary Political Thought. *Columbia.*

Virginia Elizabeth Fox; A.B., Stanford, 1927; A.M., *ibid.*, 1928. The Origins of the Third International. *Stanford.*

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Hilden Russell Gibson; A.B., Kansas, 1933. Socio-psychological Aspects of the Political Theory of Karl Marx. *Stanford.*

Abraham Glasser; A.B., Rutgers, 1933; A.M., Princeton, 1935. Political Philosophies Revealed in Commentaries and Textbooks in English and American Law. *Princeton.*

Robert Grove; A.B., Bucknell, 1931; A.M., Syracuse, 1933. Attitudes Toward Franklin D. Roosevelt as Candidate and President. *Syracuse.*

[1] Similar lists have been printed in the REVIEW as follows; V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936).

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Norman H. Hinton; A.B., California (L.A.), 1933; A.M., Columbia, 1934. American Political Scientists: Francis Lieber. *Columbia.*

C. Leonard Hoag; A.B., Albion, 1929; A.M., Michigan, 1930. American Opinion on the Navy, 1919–1923. *Clark.*

Robert D. Howard; A.B., Harvard, 1924; A.M., *ibid.*, 1928. Theories of Conservatism and of Constitutional Democracy in State Constitutional Conventions. *Harvard.*

William Isaacs; B.S. in S.S., College of the City of New York, 1925; A.M., Columbia, 1932; J.D., New York, 1928; J.S.D., New York, 1929. Contemporary Marxian Political Movements in America. *New York University.*

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Raymond D. Lawrence; A.B., Oregon, 1925; A.M., *ibid.*, 1927. Pluralistic Sovereignty. *California.*

Mousheng Lin; A.B., Fukien University, 1926; A.M., Oberlin, 1932. The Political Theory of Anti-Stateism. *Chicago.*

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Milton R. Merrill; B.S., Utah State College, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia.*

Edwin Mims, Jr.; A.B., Yale, 1921; A.M., *ibid.*, 1922. Jacksonian Democracy and Its Broader Theoretical Implications. *Harvard.*

John E. Nordskog; A.B., Drake; A.M., Columbia; Graduate Studies at London School of Economics and Political Science. Democracy as an Ideology. *Southern California.*

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Leo C. Rosten; Ph.B., Chicago, 1930. The Washington Correspondents. *Chicago.*

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Stewart VanDyke; A.B., Indiana, 1935. Peace-Time Technique of Censorship. *Syracuse.*

Clarence H. Yarrow; A.B., Cornell, 1931. The Philosophical Origins of Italian Fascism. *Yale.*

GOVERNMENT AND POLITICS OF THE UNITED STATES AND ITS DEPENDENCIES

Wesley Adams; A.B., Northwestern, 1935; A.M., *ibid.*, 1936. Some Phases of American Neutrality Legislation. *Northwestern.*

Robert D. Baum; A.B., Williams, 1934; A.M., Columbia, 1935. Federal Aspects of National Power Policy. *Columbia.*

Hillman M. Bishop; A.B., Columbia, 1926. Rhode Island and the Federal Constitution. *Columbia.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

Philip I. Booth; A.B., Arizona, 1930. Criminal Syndicalism Legislation in the United States. *Chicago.*

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G. W. Burkholder; A.B., Penn. State, 1925; A.M., *ibid.*, 1926; LL.B., Duquesne, 1931. Interest Rate Schedules in Relation to Borrowing by Public Enterprises, *Columbia.*

Persia Campbell; M.A., Sydney, 1921; M.Sc. (Econ.), London, 1923. Consumer Representation in the New Deal. *Columbia.*

George T. Davis; A.B., Clark, 1922; A.M., *ibid.*, 1922. The Idea of American Naval Parity. *Yale.*

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Robert P. Lane; A.B., Michigan, 1913; A.M., *ibid.*, 1915. American Naval Armament Building, 1884–1898. *Chicago.*

Virginia Manca; A.B., University of California at Los Angeles, 1931. Congressional Procedure on Authorizations and Appropriations in Relation to the National Budget. *Washington* (Seattle).

Edwin M. Martin; A.B., Northwestern, 1929. Influence of Organized Economic Groups on Federal Tax and Tariff Legislation from 1921 to 1933. *Northwestern.*

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Floyd E. McCaffree; A.B., Michigan, 1927; A.M., *ibid.*, 1928. The Nomination and Confirmation of Justices of the Supreme Court of the United States. *Michigan.*

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Roland E. Miller; A.B., Washington, 1931; A.M., *ibid.*, 1933. Party Responsibility in Foreign Relations in the United States. *Washington* (St. Louis).

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Walden Moore; A.B., Harvard, 1922. The Big Navy Movement in Congress, 1893–1913. *Columbia.*

Harold W. Moseley; A.B., Amherst, 1928; M.B.A., Harvard, 1931. The Effects of the "Cash and Carry" Provision of the 1937 Neutrality Legislation. *Harvard.*

James Alfred Perkins; A.B., Swarthmore, 1934. Congressional Investigations. *Princeton.*

W. D. Polk; A.B., Vanderbilt, 1933; A.M., *ibid.*, 1934. International Obligations Contracted by the United States without Reference to the Senate. *New York University.*

Margaret J. Schmidt; Ph.B., Chicago, 1932. Kansas: A Study of Prairie Politics. *Chicago.*

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Hubert Searcy; A.B., Birmingham-Southern College, 1929; A.M., Duke University, 1933. Use of Congressional Joint Resolutions in Matters Relating to Foreign Policy. *Duke.*

Dorothy A. Shields; A.B., Goucher, 1931; A.M., Pittsburgh, 1933. Third Party Recognition. *Pittsburgh.*

John S. Sills; Ph.B., Wesleyan, 1925; A.M., Columbia, 1932. Political Aspects of the Consumer Coöperative Movement. *Ohio State.*

Libia Harold Studley; B.S., College of the City of New York, 1921; LL.B., Fordham, 1925; A.M., Columbia, 1929. Progress of Aviation Legislation in the United States. *Columbia.*

Eugene O. Tanner; A.B., Texas, 1912; A.M., Texas, 1913. Congressional Reapportionment, 1910–1930. *Texas.*

Irene Till; A.B., Syracuse, 1928; A.M., Radcliffe. The Politics of the Milk Industry. *Columbia.*

John O. Tobler; lic. en droit, Geneva, 1935. Independence of the Judiciary in the United States. *Johns Hopkins.*

Ruth G. Weintraub; A.B., Hunter, 1925; A.M., Columbia, 1927; J.D., New York University, 1920. Government-Owned Corporations—A Study in Federal-State Relationships. *Columbia.*

Albert C. F. Westphal; A.B., Columbia, 1929. The House of Representatives and American Foreign Policy. *Columbia.*

CONSTITUTIONAL AND ADMINISTRATIVE LAW IN THE UNITED STATES

Willard B. Cowles; A.B., Columbia, 1928. The Interference with Property in Consequence of Treaty without Just Compensation and without Due Process of Law. *Columbia.*

Harry Lee Cummings; A.B., Arkansas State Teachers' College, 1927; A.M., Iowa. 1930. The Constitutional Doctrines of Mr. Justice Brandeis. *Iowa.*

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Edna Rose Fluegel; A.B., Marywood College, 1933; A.M., Duke University, 1936. Concepts of Economic Liberty and the United States Supreme Court. *Duke.*

William L. Grossman; A.B., Harvard, 1927; A.M., *ibid.*, 1928; LL.B., *ibid.*, 1932. The Property Clause of the Federal Constitution. *Columbia.*

Georgia Hamilton; A.B., Barnard, 1926; A.M., Columbia, 1927; J.D., New York University, 1930. The Trends in Governmental Liability and the Liability of Public Officers in the United States since 1890. *Chicago.*

Harold F. Hartman; A.B., Notre Dame, 1930; A.M., Cornell, 1931. The Constitutional Doctrines of Edward Douglass White. *Cornell.*

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Joseph Ernest Kallenbach; B.S. in Ed., Central Missouri State Teachers' College, 1926; A.M., Missouri, 1928. Delegation of the Commerce Power to the States by Congress. *Michigan.*

Joseph Kise; A.B., St. Olaf, 1916; A.M., Harvard, 1928. The Constitutional Doctrines of Harlan F. Stone. *Harvard.*

Lynford A. Lardner; B.S., Northwestern, 1932. The Constitutional Doctrines of Justice Brewer. *Princeton.*

William L. LaRue; A.B., Northwestern, 1933. Patents and Copyrights in American Public Law. *Princeton.*

Aaron Lewittes; B.S.S., College of the City of New York, 1932; LL.B., Columbia, 1935. Judicial Review and the Problem of an Independent Administrative System. *Columbia.*

Rebecca Matthews McBride; A.B., Maine, 1930; A.M., American, 1932. Influence of the Supreme Court on State Legislation. *American.*

Charles N. R. McCoy; A.B., Dartmouth, 1932. The Law Relating to Public Inland Waters. *Chicago.*

Vera McLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

Harold William Metz; A.B., Cornell, 1930; A.M., *ibid.*, 1931. The Nature of Federal Judicial Power. *Cornell.*

James J. Robbins; California (L.A.), 1926; A.M., Harvard, 1927. Economic Associations in the Constitutional System. *Princeton.*

Leon Sachs; LL.B., Maryland, 1931. *Stare Decisis* and the United States Supreme Court. *Johns Hopkins.*

John A. Schroth; A.B., Princeton, 1932; A.M., *ibid.*, 1934. Dual Federalism in American Constitutional Law. *Princeton.*

James Emmett Sebree; A.B., Oberlin, 1902; LL.B., Georgetown, 1925; LL.M., *ibid.*, 1926; D.C.L., National University, 1927. Power of Federal Government and States to Tax Agencies and Instrumentalities of Each Other. *Johns Hopkins.*

Theodore H. Skinner; A.B., Hamilton, 1919; A.M., Columbia, 1929. The Relation of Administrative Discretion in the United States to Constitutional Rights. *New York University.*

Stanley Trefil; B.S., Northwestern, 1929. State Police Power in Interstate Commerce. *Northwestern.*

Benjamin Rollins Twiss; A.B., Dartmouth College, 1934. Laissez-faire in American Constitutional Law. *Princeton.*

Marion Wolchock; B.S., New York University, 1929; A.M., *ibid.*, 1932. The Judicial System of Greater New York. *New York University.*

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AMERICAN STATE AND LOCAL GOVERNMENT AND POLITICS

Gladys L. Baker; A.B., Michigan, 1933. The County Agent. *Chicago.*

Erwin W. Bard; Ph.B., Yale, 1925; A.M., Columbia, 1929. The Port of New York Authority. *Columbia.*

F. J. Barnes, II; A.B., William and Mary, 1927; A.M., *ibid.*, 1927. The City in Virginia. *North Carolina.*

Vincent M. Barnett, Jr.; A.B., California, 1935; A.M., *ibid.*, 1936. Method and Procedure of Deciding Contested Elections in the United States. *Harvard.*

Byron C. Biggs; Ph.B., Kenyon, 1921; A.M., Ohio State, 1932. The City Manager Movement in Ohio. *Ohio State.*

Genevieve Blatt; A.B., Pittsburgh, 1933; A.M., *ibid.*, 1934. The Assessment and Revision of Taxes in Allegheny County, Pennsylvania. *Pittsburgh.*

Marcy G. Bodine; A.B., Bradley Polytechnic Institute (Peoria, Ill.), 1928; A.M., Iowa, 1934. The Administration of the Drivers' License Law of Iowa. *Iowa.*

Walter Thompson Bogart; A.B., California (L.A.), 1930; A.M., Stanford, 1931. Jurisdictions, Functions, and Geography of Government in Los Angeles County. *Stanford.*

Oscar Buckvar; B.S., College of the City of New York, 1923; A.M., Columbia, 1925. Pressure Groups before the New York Board of Estimate and Apportionment. *Columbia.*

J. A. Burdine; A.B., Texas, 1926; A.M., *ibid.*, 1929. Regulation of Industry in Massachusetts, Pennsylvania, and Tennessee before 1875. *Harvard.*

Richard L. Canuteson; A.B., Wisconsin, 1925; A.M., *ibid.*, 1930. Railroad Issues in the LaFollette Gubernatorial Campaigns. *Wisconsin.*

Asher N. Christensen; A.B., Minnesota, 1924. A Study of the Legislative Settlement of Contested Election Cases. *Minnesota.*

Frances Priscilla DeLancy; A.B., University of West Virginia, 1929; A.M., *ibid.*, 1931. The Licensing of Professions in West Virginia. *Duke.*

Frederick William Dumschott; A.B., Washington College, 1927; A.M., Virginia, 1931. State Administrative Control of Cities in Maryland. *American.*

Preston W. Edsall; A.B., New York Univ., 1923. Journal of the Courts of Common Right and Chancery of the Province of New Jersey, 1683–1702, with an Introduction. *Princeton.*

Lavinia M. Engle; A.B., Antioch College, 1912. County Government in Maryland. *Johns Hopkins.*

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